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OR

# CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND

DURING

# THE MIDDLE AGES.

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# THE CHRONICLES AND MEMORIALS

OF

# GREAT BRITAIN AND IRELAND

## DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER THE DIRECTION OF THE MASTER OF THE ROLLS.

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On the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an Editio Princeps; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

The works to be published in octavo, separately, as they were finished; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

*Rolls House,*
*December* 1857.

# HENRICI DE BRACTON

DE

# LEGIBUS ET CONSUETUDINIBUS

# ANGLIÆ.

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# INTRODUCTION.

# INTRODUCTION.

THERE are evident signs in the later treatises of Bracton, that the text of them has been either more hastily constructed, or not so carefully revised as the text of the treatises which precede them in the order of the present work. The later treatises, however, are not on that account less interesting, on the contrary, they are in a certain sense more instructive, as they disclose more explicitly the method whereby that branch of the law of England, which is distinguished by the title of the Common Law, was being gradually defined by the judgments of the king's justiciaries in such a manner, as to supply upon almost every subject principles of recognised right for the decision of future cases. The English law was at this time well advanced in its passage through that intermediate stage between unwritten usage and written right, which may be styled recorded custom, in other words, usage approved by the deliberate judgment of righteous men, whereof an authorised record was kept, which formed a precedent of general obligation. It was especially to the task of examining these ancient judgments of righteous men that Bracton applied himself, as he states in the first chapter of his first book, and it was by reducing into order whatever he thought noteworthy in their acts, counsels, and answers, that he hoped to supply an useful *summa* for the instruction of a younger generation, who might be called upon to ascend the judgment seat, and might otherwise risk to ascend it, before they had learnt the laws which they had to administer. Such a work was the more

called for at a time when the king was carrying on the administration of justice without a justiciar or a chancellor. Stephen Segrave, who upon the disgrace of Hubert de Burgh had succeeded to the office of justiciar, had been dismissed by Henry III. in 1234, and no successor had been appointed in his place, whilst Ralph Neville, Bishop of Chichester, had vacated by death the office of chancellor in 1244, and the king, who had taken from him the seals sometime before his death, entrusted them to keepers from time to time, and made no fresh appointment of a chancellor.

The treatise, with which the present volume commences, is a treatise concerning Entry (de Ingressu), in other words, concerning the method of proceeding on the part of the owner of a tenement for the recovery of the seysine of it, when it is in the possession of a tenant for a term of years, whose lease has expired. The treatise is in itself of considerable juridical interest, as it illustrates a development, which the jurisprudence of the Curia Regis had undergone since the reign of Henry II., whilst the subject matter is of no slight historical importance, as it marks a further stage in a course of political and economical progress, which the Provisions of Merton had inaugurated, and whereby the feudal organisation of the cultivators of the soil was being gradually replaced by a system of free cultivators under leases from the owners of the land. It would appear from Glanville's treatise, that in his time the courts of the king declined to take cognisance of any contract between the owner and the cultivator of the soil of the kind known to the Roman law as *locatio conductio*, and that they declined in any such case to enforce the payment of rent, or to enforce recovery where the lessee had failed to comply with the conditions of his lease. There can be little doubt that the change in the practice of the king's courts was attributable to the circumstance, that the custom was becoming general for the

owners of land to let it to free cultivators for rent, instead of granting it to feudal retainers for services, and that accordingly the king's courts found it expedient to exercise jurisdiction over leasehold contracts, which had hitherto been regarded as outside the pale of the law. The assise of novel disseysine had already, in the reign of Henry II., laid the axe to the root of feudal tenures in England, and the writ de Ingressu seems to have been originally devised by the king's justiciaries early in the reign of Henry III., as subsidiary to the writ of novel disseysine, with the view of enabling the heir of a party disseysed to recover a tenement, notwithstanding the disseysee or the disseysor had died before effect had been given to the writ of novel disseysine. The further application of the writ of entry to cases of land demised for a term seems to have originated with the same justiciaries, namely, William de Ralegh and Martin de Pateshull. Mr. Reeves, in his well-known History of the English Law, attributes the introduction of the writ of entry to the refinement, which had pervaded all parts of the law relating to seysine and property in the early years of the reign of Henry III. There can be no doubt that the scientific attainments of the school of jurists, who occupied the bench in the early years of the reign of Henry III., facilitated the development of English jurisprudence in a direction adverse to feudalism, but a necessity for the exercise of that refinement in the direction indicated by Mr. Reeves must have arisen either from new conditions of land-tenure having become general, or from ancient conditions of tenure, which had existed before the conquest, having been once more revived. Amongst those ancient conditions that of *loenland*, held by free cultivators, was well-known in England before the conquest, and the introduction of the writ de Ingressu, whereby the king's courts came to the aid of the owners of land demised for a term to free cultivators, was calculated to encourage the revival of an ancient system of tenure, in lieu of granting the

freehold in fee on condition of personal service. Whilst Bracton, accordingly, has not overlooked the original object of the writ of entry as subsidiary to the writ of novel disseysine, and has dedicated to the discussion of it from that limited point of view several chapters in his treatise on an assise of novel disseysine, he now proceeds to dedicate a whole treatise to the discussion of proceedings under a writ of entry, where that writ is sued out for the purpose of recovering seysine of a tenement, which is in the possession of a lessee under a demise for a term of years. The juridical necessity for a special remedy in such a case arose from the fact, that neither an assise of novel disseysine nor an assise of mortdancester would apply to such a case. An assise of novel disseysine would not be applicable to the case where the claimant had himself demised the tenement for a term, because there would not have been any tortious act on the part of the tenant in acquiring seysine of the tenement; on the other hand, an assise of mortdancester would not apply to the case where an ancestor of the claimant had so demised the tenement, inasmuch as the ancestor would not have died seysed of it as of fee and in his own domain. But the king's justiciaries set a limit to an action of entry in such cases, and only allowed it, where the entry could be proved by the sight and hearing of living persons. In all other cases, where the entry had been too remote to admit of such proof, the claimant had to proceed by the ancient way of a writ of right.

To the jurists who had studied in the School of Vacarius at Oxford, or who had followed the teaching of those upon whom the mantle of Vacarius may have fallen, amongst whom Bracton has by tradition a place, the distinction between the usufructuary of land and the proprietor of land was familiar, and they would have no difficulty in distinguishing the right to the use and the fruits of land from the right to the dominion, the property, the fee, and the freehold. Thus Bracton

lays it down in his treatise De Ingressu, p. 5, that he who demises the use and the fruits of land for a term of years, although of very great length, provided that the entry into the land can be proved by the testimony of sight and hearing, retains for himself the dominion, the property, the fee, and the freehold, provided that he had them all previously, and if not so, a certain portion of them according to what he had previously. This passage is noteworthy, as Bracton clearly contemplates the application of a writ of entry to lands leased by a feudal lord to a free cultivator, over which the lord would retain the dominion notwithstanding the lease, whereas in the next following reign of Edward I. the right of dominion in such a case had become so unimportant, that Britton omits all allusion to it. Thus Britton says: The word "term" extends as well to a term of life as to a term of years. But he who leases for a term of years, although he makes the lease for a term of a hundred years (and here Britton follows the language of Bracton), leases the profits only, and retains for himself the fee, and the right, and the freehold, if he had them before the lease, and all that he retains he will leave at his death to his heir. Liv. V. ch. xiv., sec, 8.

The proceedings under a writ of entry, where the owner of land sought to recover possession of it at the expiration of the lessee's term, were held in ordinary course before the king's justiciaries on their iter, except in the case where the tenant set up a title to hold the land through a feoffment from a third party for his homage and service. In such a case he might sue out a writ from the Crown to the Viscount, requiring him to summon twelve knights or other loyal men of the visne, to recognise on their oaths, whether he held the land for a term of years from the claimant or his ancestor, or otherwise had been enfeoffed of it by a third party. An alternative proceeding might be had before the king's justiciaries at Westminster. In the former case, where

an inquest had been held in the full county court, the result had to be certified under the seals of the viscount and of the keepers of the pleas of the crown to the king's justiciaries at Westminster. Bracton does not define the circumstances, under which the inquest itself was to be held before the justiciaries and not in the county court, but it may be presumed from the language of the writ used in the case of an inquest in the county court, that the claimant was entitled to have the inquest held before the king's justiciaries at Westminster, whenever the viscount was connected by affinity with the tenant, or was otherwise likely to be interested in the tenant's favour. Mr. Reeves, in commenting on the alternative proceeding of summoning the jurors to appear before the justiciaries at Westminster to try what he terms a "commune placitum," observes that, "it seems "very particular and not easily to be accounted for," but he appears to have overlooked the importance of the issue, which in some cases was to determine whether the tenure of the land was feudal or allodial, and not merely whether A. or B. had the better title to it.

I have used the term "viscount" here and elsewhere as the English equivalent of the Latin vicecomes. I am not unaware that objection may be taken to this use of the term "viscount" as the designation of the king's officer, to whom the royal writs were addressed on occasions when the county court had to be convened, and that several learned persons, for whose judgment in such matters I have a great respect, would have preferred that I should have translated the word "vicecomes," wherever it occurs in Bracton's work, by the English title of sheriff. I am also fain to confess that, if I had consulted my own convenience I should have adopted the term sheriff in preference to that of viscount, as of more familiar use, and so commending itself more readily to my pen; in fact, the undue preference of my pen in favour of the term "sheriff" must plead my excuse for

having inadvertently in some few passages, whilst translating the text of Bracton, deviated from the rule which I have invariably observed, as I believe, in the English rendering of the royal writs. My reasons for adopting the term "viscount" in preference to "sheriff" are partly formal and partly substantial. To deal first with the formal reasons, and by formal I mean the reasons founded on the *communis usus* of contemporary statesmen and lawyers. That visconte was the Norman equivalent of vicecomes cannot be denied, nor can it be denied that the practice of pleading in Norman French was introduced into the curia regis as early as in the reign of Henry I. From this time forward, down to the reign of Richard III. the language of lawyers was either Latin or Norman French, and vicecomes or visconte is the term invariably used to denote the chief representative officer of the Crown in general matters of justice and revenue in the several counties. Latin meanwhile maintained its place in constitutions of the king in council and in Royal Charters down to the reign of Edward I., although French had been adopted in the reign of Henry II. on the iter of the justiciaries, and as the spoken language of the courts. Further the French tongue had acquired in the reign of Henry III. an undisputed place in public Acts and was adopted in the Statutum de Scaccario, which is assigned to 51 Henry III. In the next following reign of Edward I. French became the language of the Statute Law, and visconte or viscounte is the term invariably used in the Statutes down to the fourth year of Henry VII. when English at length became the language of the Acts of Parliament. This invariable use of the term "viscount" is not peculiar to the Statute Book. It was in general use as the alternative of vicecomes in the Law Treatises and in the Year Books. Britton, for instance, and the Mirroir des Justices are instances of the use of viscounte in the text books of the reigns of Edward I. and Edward II., whilst the instances in the Year Books and the Law

Reports are too numerous to admit of citation. By a strange coincidence, as the time drew near for the substitution of the English language in place of the French as the language of Acts of Parliament, a necessity arose for discontinuing the use of the title of viscount, as the official designation of the king's representative and president of the county court. Heny VI., with what particular object in view does not clearly appear, except for the pleasure of exercising a right heretofore enjoyed by the kings of France, shortly after he had succeeded in establishing himself in the capital city of the kings of France, conferred the title of viscount as a title of personal dignity on John, Lord Beaumont, by letters patent of 18 Hen. VI. The title itself had no territorial significance in England, but it warranted the bearer to take precedence over barons. In the next following year the same king conferred the title of viscount on John, Lord Bouchier. Edward IV. followed the example of Henry VI., and created Lord de l'Isle, Viscount Berkeley, in 1480, and thus it happened that the title of viscount met with a similar fate to that which the title of earl had met with in the reign of King Stephen. It had become a term of ambiguous import, and was no longer exclusively used to designate the Crown's representative at the head of a county. It was accordingly thought expedient to devise another title for the Crown's representative in the place of viscount, and, as English was henceforth to be the language of the Statute Book, the old Anglo-Saxon title of "scirgerefa" was furbished, but instead of the softer southern and midland inflexion of shirreve being adopted, the harsher form of "shiref" as current in the north was preferred, a form which has misled many persons in the present day to suppose that the modern term "sheriff" belongs to the same family as the Arabic "shroffe" a writer.

There is an old saying, "give me the songs and the "laws of a country and I will write its history." I have

quoted the laws of England in illustration of the alternative use of the terms vicecomes and viscount during four centuries. I will now invoke, as evidence on the part of the songsters of the Edwardian period, a Latin song on the venality of the king's justiciaries written in the reign of Edward I., and which is preserved in a MS. in the Harleian collection in the British Museum, No. 930, fol. 19. I shall have occasion in a future passage to allude to Sir Henry Spelman's derivation of the term scirgerefa from the Anglo-Saxon verb "reafan," to plunder, and to his justification of that root by his reference to the term "exactor," which is used by many contemporary Latin writers as descriptive of the functions of the vicecomes. The vicecomes of the Angevin period kept up in his character of "exactor" the traditional disrepute of his Norman predecessor, and thus the Edwardian songster sings of him and his brethren under their Latin title of vicecomites:

De vicecomitibus
Quam duri sunt pauperibus
    Quis potest enarrare?
    Qui nihil potest dare,
Huc et illuc trahitur,
Et in assisis ponitur,
    Et cogitur jurare
    Non ausus murmurare.
Quod si murmuraverit,
Ni statim satisfecerit,
    Est totum salsum mare.

The Latin title of vicecomes was evidently ringing daily in the ear of this Edwardian songster, whilst a little later on in the same thirteenth century the author of the Life of Edward the Confessor, written in French verse, complains of king Harold, and likens him to a "vescunte" counting out his money at the door of the king's exchequer:

Deners cum usurer amasse
De gent rendre ne s'alasse
*Cum vescunte al eschecker.*
Cet per deners a cunter.

Thus much for the songs of the period. It is not, however, for the sake of formal accuracy that I have employed the term "viscount" as being in contemporaneous use with the term vicecomes during the Angevin period, for I might be open to the charge of pedantry, if merely for the sake of antiquarian precision I had used a phrase, which might not be so intelligible to English readers as the term "sheriff." There are, however, substantial grounds for not designating the vicecomes of the Angevin period by the Tudor title of sheriff. The vicecomes of the Angevin period had a sphere of duty far more comprehensive and more authoritative than that of the sheriff of the Tudor period, or than that of the high sheriff of a county in the present day; whilst to style him the shire reeve, as if he were the scirgerefa of the Anglo-Saxon period, who had passed unscathed through the fiery furnace of the Norman Conquest, would equally lead to a misconception of his functions. The vicecomes of the Angevin period was a far more important officer than the Anglian scirgerefa. The Norman idea of the vicecomes, the feudal delegate of the comes, had crept in and dominated the Anglian idea of the scirgerefa. Earls and bishops, the former representatives of the local independence of the shire, had lost their official character as administrators of the law. The king's justiciaries, representing the central authority of the Crown, had replaced them as administrators of the law in its more weighty matters, whilst the vicecomes, as the local representative of the Crown, presided alone in the county court, whence the alderman and the bishop had been successively eliminated, and where he administered the law in minor matters once a month subject to an appeal to the curia regis. Further, he had authority to convene

the bishops and the earls and barons who had baronies in his county twice a year in his shire moot or tourne, and to amerce them at his pleasure if they failed to appear. This was one of the grievances of the barons set forth in their petition at the so-called "Mad Parliament" of Oxford of 1258, and which led up to the war of the barons in 1263. If it had been absolutely necessary to select from Anglian official titles one which should approach nearest in its meaning to the Norman vicecomes, I should have considered the title of king's reeve to be more appropriate to the vicecomes in respect of the analogy of his fiscal and judicial functions than that of shire reeve, but by many of my readers, who might not be familiar with the organisation of an Anglo-Saxon shire after it became part of a kingdom, I should have been held guilty of the fault of interpreting an antiquated Latin term by a still more antiquated and far more obscure Anglian term. On the other hand, I was unwilling to make use of the title either of king's reeve or of shire reeve, as the English synonym of vicecomes, because no two legal antiquaries agree as to the proper meaning of the term reeve, or as to the etymology of its Anglo-Saxon predecessor "gerefa." Mr. John Mitchell Kemble, one of our most profound Anglo-Saxon scholars, derives gerefa from the verb "refan" or "rofan," to call aloud, and if this view be correct, the original function of the scirgerefa was to convene the freeholders of the shire in the "scirgemote," in which the ealdorman and the bishop, according to a law of king Edgar, were joint presidents On the other hand, Sir Henry Spelman, no mean authority, holds the word "gerefa" to be equivalent to "gereafa," and to be derived from the verb "reafan," to plunder, and this view has some support in the fact that the word "scirgerefa" is frequently translated by the Latin word "exactor," and the exaction of shire-dues was a characteristic feature in the Anglo-Saxon period of a shire reeve's duties. Further, the term gerefa is a

generic term, and it is used throughout the Germanic constitutions always in connexion with judicial proceedings, so much so that Mr. J. M. Kemble maintains that wherever there was a court there was a reeve, and wherever there was a reeve there was a court.

We find, accordingly, frequent mention in the Saxon Chronicle of a reeve in relation to persons or places other than the ealdorman or the shire. There was, in the first place, the heahgerefa or high reeve, who seems to have been a royal officer appointed on extraordinary occasions, and for the most part of military rank, as Simeon of Durham describes him in A.D. 780 by the Latin title of "dux." Next in importance to this officer was the cyninges gerefa, the king's reeve, who is mentioned in the laws of Alfred, and also in the Saxon Chronicle under the year 787, and whom Florence of Worcester styles "regis præpositus." Neither of these officers are mentioned until we read of Anglo-Saxon kings. The scirgerefa, on the other hand, was an officer of earlier date, who seems to have existed before the office of king was known in England, when the scir constituted the entire state territory, so to say, of which the ealdorman was the hereditary chief, who presided in conjunction with the bishop in the scirgemote. The scirgerefa was at this time the executive officer of the scirgemote, elected by the voice of the freeholders of the scir, and he accounted to the ealdorman of the scir for all fines and dues levied on the freeholders. Whether he was also the legal assessor of the ealdorman and the bishop is by no means clear, and it is useless to seek in the etymology of the word the solution of this difficult problem. Phillips, in his Englische Reichs-und-Rechts-geschichte suggests that *gerefa* is but a transposed form of *gefera*, which means *socius*, in which case the *gefera* of a shire may be supposed to have occupied a place in relation to the ealdorman analagous to that which the comes of a province occupied in relation to the emperor or king. Other reeves of the

Anglo-Saxon period may be named, as, for instance, the burh gerefa or the reeve of a fortified town, the port gerefa or the reeve of a town protected by a fence and a ditch, into which access could only be had through a gate (porta). A wic gerefa or village reeve may be added to the catalogue, and a tungerefa or reeve of a township. Other reeves might be mentioned, amongst whom a bishop's reeve deserves notice, but of all these reeves the latest in origin, and perhaps the most important, seems to have been the king's reeve, who is mentioned twice in the laws of king Alfred as sitting with the king in the folkmote and administering justice there. Hence the question arises whether the king's reeve was a new officer and the predecessor of the Crown officer known subsequently as the king's chancellor, or whether he was a development of the scir-gerefa with this difference, that whereas the Anglo-Saxon scir-gerefa was originally elected by the freeholders of the shire, the king's reeve was nominated by the king and had to render his account to the king instead of to the ealdorman of the shire. The first step in the process of consolidating an Anglo-Saxon kingdom appears to have been to eliminate the ealdorman from the shire-mote, and the next step was to eliminate the bishop and to convert the shire reeve into a king's reeve, constituting him the sole president of the county court and of the shire motes. King Canute the Dane accomplished the first stage in this process by mediatising the ealdorman, and by appointing a Danish yarl or earl to rule over several shires. Under this Danish innovation the king's writs were directed to the earl and to the bishop. Still there were some shires in which the ealdorman was not removed, but was allowed to die off, and meanwhile he continued to preside conjointly with the bishop over the shire-mote.

The institution of the office of earl was an important step towards the consolidation of the Danish

monarchy in England, but William the Norman saw in the great earldoms a possible danger to the supremacy of his crown, and he broke them up wherever they were aggregates of several contiguous shires. He allowed, however, the earls to preside over more counties than one, provided the counties were separate and apart from one another. William Rufus went a step further and created titular earls with a money payment known as the third penny collected from the county which gave its title to the earl, who had, however, no further official connexion with the county. Hence we find in the Dialogus de Scaccario written in the reign of Henry II. this definition of an earl: "Comes autem est, qui tertiam por-" tionem eorum, quæ de placitis proveniunt, in quo-" libet comitatu percipit." Meanwhile the bishop had been eliminated from the county court by William the Conqueror, and the meaning of the term comes had become denaturalised, for we find in the same Dialogus de Scaccario this debased definition of the title, "Summa " namque illa, quæ nomine firmæ requiritur a vice " comite, tota non exsurgit ex fundorum redditibus, " sed ex magna parte de placitis provenit, et horum " tertiam partem comes percipit, *qui ideo sic dicitur*, " quia fisco socius est et comes in percipiendis. Porro " vice-comes dicitur, quia vicem comitis suppleat in " placitis illis, quibus comes ex suæ dignitatis ratione " participat."

The vicecomes of the Angevin period would thus appear to have combined in his own person the ancient judicial functions of the ealdorman with the executive functions of the scirgerefa, for the comes or earl, although he had in theory succeeded to the presidency over the county, abandoned in practice to the vicecomes the functions formerly discharged by the ealdorman in the county court. On the other hand, the vicecomes was a nominee of the Crown, and was in fact the king's representative within the county. He farmed the king's revenues both

from the folkland, which William the Conqueror had converted into Royal demesne, and from the fees levied upon the suitors in the county court. He was not, however, necessarily resident within the county, unlike the scirgerefa, who resided within his shire. A favourite of the crown, for instance, might be constituted vicecomes of more than one county. Fulk de Breaute, a Norman follower of king John, when he was disgraced by Henry III. in 1224, was the vicecomes of six counties, whilst an earl or count in his turn was not disqualified from being the viscount of the county over which he was earl. Of this we have several instances in the reign of Henry III. William de Warrene, earl of Surrey, was also viscount of the county of Surrey, whilst Hubert de Burgh, earl of Kent, was also viscount of Kent. Nay more, Prince Edward, earl of Chester, afterwards king Edward I., was viscount of Bedfordshire and of Buckinghamshire in 52 Henry III. at the time when he set out for the Holy Land. In all these cases the viscount performed the duties of his office by a subvicecomes or custos.

It would be an error to suppose that the term "shire" after the conquest was identical in its meaning with the term "county." Cornwall, which was a single county, was divided even so late as the twelfth century into six shires, one of which, Triconshire, at present the hundred of Trigg, is mentioned in King Alfred's will, unless we adopt Mr. J. M. Kemble's suggestion that the Triconshire of King Alfred's time was the entire county of Cornwall. The county of York was divided into Richmondshire, Riponshire, Hallamshire, Islandshire, Norhamshire, and probably other similar districts, the names of which have passed away, for the term scir or shire, or as it was pronounced in East Anglia, "sheer," signified a separate unit of any organised system, and the verb "shear" is still in use in its primitive sense of cutting off or separating, as for instance, the shearing

the fleece of a sheep. Even the city of York was divided into seven shires, one of which was the archbishop's shire, and the title of sheriff is still kept up in the city of York as the title of an honorary officer of the city by the side of the mayor. In fact the term "scir" or "shire" meant little more than a separate district. There is no difficulty in understanding its use in such a sense during the period known as the Heptarchy, when the kingdom was the organised system, and the shire was a subdivision of it, but it is difficult to realise the pre-existence of the shire before a kingdom was formed, unless the shire in its earliest use meant separation in the sense of independence.

I have, accordingly, felt a reluctance to render in English the office of vicecomes during the Angevin period of the history of our legal institutions by the term sheriff, for however much the title of sheriff may have become rehabilitated in public estimation since the reign of Henry VII. by the Statutory use of it as the designation of the chief officer of the Crown within a county, inasmuch as the office of Lord Lieutenant was not introduced until the reign of Philip and Mary, it was undoubtedly in Bracton's time employed for less noble uses. Hence when English became the language of our Statute Book, as the term viscount had then come to signify a dignity without an office, and the title of "sheriff" was to be recoined, it was coupled in our Statute Book with the term "county," notwithstanding the tautology of the phrase "sheriff of a county." Further it would appear as if the vitality of the word "sheriff" had been due to its debased use in common parlance, and it failed on its revival to secure for the king's representative in the county a proper place in public estimation, so that it was found expedient to revive another Anglo-Saxon title, that of high sheriff (Heahgerefa), and to distinguish the sheriff of a county from other sheriffs by the distinctive appellation of high sheriff.

If I should be asked, then, why I have rendered the Latin title of vicecomes, wherever it occurs in Bracton's Summa, by the Norman-French title of viscount instead of the Anglo-Saxon title of sheriff, my answer is that the vicecomes of the Angevin monarchs differed so much from the Scirgerefa, that it is well to mark the difference by the use of the distinguishing term of viscount. It is a mistake, in my opinion, to contend for a *formal* continuity of Anglo-Saxon institutions. The vicecomes of the Angevin monarchs was a very different personage from the scirgerefa of the Anglo-Saxon period. Under the reign of Edgar it was the ealdorman who presided twice in the year in the shiremoot conjointly with the bishop (Laws of Edgar II., § 5). This enactment is repeated nearly in identical words by King Canute in his Secular Dooms, G. 18. The scirgerefa, on the other hand, was the executive officer of the shire who carried into execution the judgments of the shiremoot in civil and criminal matters. Under the Angevin monarchs the ealdorman had disappeared from the political stage, and the bishop had abdicated his joint presidency in the county court, whilst the vicecomes in the name of the king presided over the freeholders of the county, both in their monthly courts and in their six-monthly tourns. Further, the vicecomes had become the chief fiscal officer of the Crown within the county, and he had the command of the *fyrd*, which in Anglo-Saxon times could only be summoned by the ealdorman. I may cite in illustration of the military authority of the vicecomes, the conduct of Ranulph de Glanville, who as viscount of the county of York called out the armed force of that county during the absence of King Henry II. in Normandy, in order to resist the invading army of the King of Scots, overtook King William at Alnwick, took him and his army by surprise, and captured the King himself with the chief nobles of his court, and thereby put an end to the war. It was on this occasion that Ranulph

de Glanville did such good service at the head of his knights, that he commended himself to the king's favourable notice, and so was enabled to plant his foot on the first step of the ladder, by which he subsequently ascended to the post of chief justiciar of the kingdom.

It is also worthy of remark that the office of viscount of a county had been very much reduced in importance in the interval between the reign of Henry III. and that of Henry VII., when the title of sheriff superseded it. From the date of the Inquest on the Viscounts in 1170, which Henry II. instituted in consequence of the loud complaints against their exactions, it had been the policy of the Crown to lower the dignity of the office by discontinuing the practice of appointing local magnates to it, and by replacing them by officers of the king's exchequer. Further by the assise of Northampton in 1176 the king's justiciaries were authorised to exercise a control over the viscounts, not merely in matters strictly judicial, but in their character of farmers of the Crown revenues. How searching were the enquiries of the justiciaries into the extortionate practices of the viscounts may be learned from the Articles of Enquiry set out by Bracton himself in his Treatise de Corona (chapter II.) to be exhibited by the justiciaries to the jurors of the assise. Similar articles were exhibited in the reign of Edward I., which will be found printed in the appendix to my second volume. Canon Stubbs has published amongst his Select Charters the text of the Articles of Enquiry of 1170 from a manuscript in the Bodleian Library (Rawlinson C. 641), and upon comparing them with the articles which Bracton represents to have been in use in the reign of Henry III., it seems probable that the articles drawn up in 1170, respecting which we know very little, were model articles, which it became part of the normal business of the king's justiciaries on future occasions to exhibit to the jurors of each county in the course of their iter. Edward I. commenced a reform in the manner

of appointing the viscounts, by authorising the freeholders of each county, where the office of viscount was not hereditary, to elect their viscount, but this practice was not attended with satisfactory results, and Edward II. was content with enacting that the viscount should thenceforth be a landholder within the county, but his nomination should rest with the chancellor, treasurer, and barons of the exchequer together with the justiciaries, and in the absence of the chancellor with the treasurer and barons of the exchequer together with the justiciaries. Here and there, however, the hereditary character of the office of vicecomes was maintained in certain families even after the title of sheriff had come into general use in England. The last Earl of Thanet was hereditary sheriff of Westmoreland within the memory of living persons, just as the office of vice comes in Scotland, introduced by William the Conqueror, and noticed under that name in the Latin Statutes of the Scotch Kings and in the "Regiam Majestatem," continued to be an heritable office, even after the title of "schireff" had been substituted for that of vicecomes in the reign of James IV. (1509). But strange to say the Crown in Scotland, instead of abolishing the hereditary character of the territorial vicecomes, preferred to set up a king's sheriff by the side of him, and appointed the king's sheriff to reside in the county with a view to look after the revenues of the Crown, and to see that justice was properly administered in the local courts. It was not until the middle of the last century that by an Act of Parliament called the Heritable Jurisdiction Act (A.D. 1748), the hereditary shirewicks were abolished, and whilst the office of principal or high sheriff was annexed to the Crown, the judicial functions of the ancient vicecomes were devolved upon a nominee of the Crown under the title of the sheriff depute, paid by a salary from the Crown and holding his office *ad vitam aut ad culpam.*

The nomenclature of the English law is almost more perplexing as to its origin than the nomenclature of English State-institutions. Earl, sheriff, and county are without difficulty traced to Danish, Anglo-Saxon, and Norman sources, but Bracton in his treatise on Entry introduces us to the term "firmarius," of which we have no mention in Glanville's work, and the origin of which is a matter of irreconcileable dispute amongst antiquaries. The word firmarius is used by Bracton to signify a termor or the lessee of a tenement for a term, but we find it applied in the earliest extant Pipe Roll, long supposed to have been a relic of king Stephen's Exchequer, but now accepted as a roll of 31 Henry I., to the contract between the king and the vicecomes, who was said to "farm" the revenues of the Crown arising within the county, and had to account to the king's exchequer annually *pro firma comitatus*. Many persons are disposed to regard the word "firma" as a Low Latin translation of the Anglo-Saxon "feorme," whilst others hold that the term "ferme" is an Anglicised rendering of the Roman "firma," and that the Anglian settlers in Britain found the contract "ad firmam" already known there, and adopted it as establishing a most convenient relation between themselves and the conquered cultivators of the soil. That the system of pledging land as a security for money, which was known to the Roman law by the term "invadiation," was introduced into England by the Romans, may be gathered from Xiphilinus, the Greek translator of Dio Cassius. This author informs us that the violent seizure of the lands of the British chiefs by Seneca in the reign of the Emperor Nero, under the pretext that they had forfeited them by failing to pay off certain loans of money which he had induced them to to accept on the security of their lands, was the cause of the insurrection of the Iceni under their Queen Boadicea, which for a time threatened

to be fatal to Roman supremacy in Britain. It is highly probable that many traditions of the Roman law survived the settlement of the Anglians in Britain. The contracts of borrowing and lending, of hireing and letting are institutions of natural law, which positive law may modify but cannot suppress, and when once the cultivated reason of the jurist has moulded those contracts into a form suitable to the wants of a people and custom has hallowed his work, it is as much the interest of the conquering host as of the conquered people to maintain the established practice in such matters, for its maintenance may be indispensable to secure to the conqueror the tranquil enjoyment of the fruits of his conquest.

Irrespective of these considerations the economical convenience of the consensual contract of the lease was of such universal application, and had struck such deep roots into every part of the Roman Empire before it was overrun by the Germanic tribes, that economical science forbids us to suppose that the system of leasing land for a produce rent originated in England with the followers of Hengist and of Horsa. I speak of the thing now as distinct from the name, nor do I conceive that the admission of the Roman origin of the *locatio fundi* goes to determine in any way that the Anglian "ferme," is derived from the medieval Latin "firma." That the system of the "ferme" existed in England before the Norman Conquest is historically certain, and it is equally certain that the Normans left it behind them in the Norman Duchy precisely as it is certain that they found it in existence in the province of Neustria, when Rollo and his followers first landed there. What may have been the title by which it was popularly described in the Norman tongue may be open to discussion, but we find it described in the Norman French of the most ancient collection of Norman customs under the title of "loage" and a century later under the title of "ferme."

There can be little doubt that the term "loage" represented the "locatio publica" of the Roman law, and that the Normans were content to build upon the old foundation of a civilisation earlier than their own, but how the title of "ferme" came into use and replaced that of loage may require a more careful investigation.

The word "feorme" comes of an Anglo-Saxon stock. It is represented by lexicographers to be synonymous with food or agricultural produce, and the verb "feormian" is accordingly held to signify to "supply with "food or provisions." What may be the root of the word I do not pretend to say, nor do I find that the latest edition of Ducange's Glossary goes further than to derive the Latin "firma" from the Anglo-Saxon "feorme," and it quotes a passage from Henry of Huntingdon, to this effect, "Mandavitque regi, quod ad firmam suam pro-"perans cibos salsatos sufficienter inveniret, alios "secum deferre curaret." This passage is found in Henry of Huntingdon's Historia Anglorum under the year A.D. 1064, and it represents Earl Tosti, the brother of Harold, to have made an assault on a house, which his brother had fitted up at Hereford for the reception of the king, and to have slaughtered all the servants, and to have placed their mutilated limbs in dishes and vases as if served up for a banquet to receive the king, and then to have sent a message to the king to the effect that he should come to his "ferme," where he would find plenty of salt provisions, but he must bring fresh provisions with him, if he wanted them. This reference of the lexicographer is not a very happy one, as we do not know from what Anglo-Saxon Chronicle Henry of Huntingdon borrowed the Tosti legend, and it has been suggested by the late Henry Petrie, Esq., Keeper of the Records of the Tower, that he has attributed to Earl Tosti a raid made by Prince Caradoc of Wales on a well stored house at Hereford prepared by Harold for the reception of King Edward. The Saxon Chronicle is altogether silent

as to any such outrage on the part of Earl Tosti. But if we carry our researches a little further back in the Saxon Chronicle, we shall find ourselves standing on more solid ground, on which also Henry of Huntingdon has built up another part of his narrative. Under the year of our Lord 1006 the Anglo-Saxon Chronicle supplies us with two valuable illustrations of the use of this term "feorme." The Anglo-Saxon text of the Chronicle, with the English translation, has been printed in the valuable collection of materials for the History of Britain, which the late Sir Thomas Duffus Hardy has published under the title of Monumenta Historica Britannica: The first passage occurs in the course of a narrative of a Danish invasion, in which, speaking of the foreign army, the chronicler says, "When it "became winter, then went the forces home; and the "army then came over St. Martin's mass to their 'frith-"'stole,' Wiht-land, and procured for themselves there "from all parts that which they needed. And then "at midwinter they went to their ready *feorme* out "through Hampshire into Berkshire to Reading; and "they did their old wont; they lighted their war-"beacons as they went." And further on, "But there "might the Winchester men see an army daring and fear-"less, as they went by their gates towards the sea and "fetched themselves food and treasures over fifty miles "from the sea. Then had the king gone over Thames "into Shropshire and there took his *feorme* during the "midwinter's tide." I am not aware of any earlier instance of the use of the word "feorme," and it would seem that, if the word "feorme" in its origin signified agricultural produce, it is in both these passages of the Saxon Chronicle used to signify a "store" of such produce, and such I am personally disposed to think was its primitive use. Now, Henry, Archdeacon of Huntingdon, uses the Saxon chronicle as the basis of his work on the history of England, the first edition

of which he published in 1135, bringing it down to the death of king Henry I. He subsequently published a second edition, which he brought down to the accession of Henry II., and which has been recently edited by Mr. Thomas Arnold of University College, Oxford, as part of the Rolls series. He describes the ravages committed by the army of Sweyn, king of the Danes, in its march through Hampshire and Berkshire to Reading, where it devoured everything that was in readiness, " quocunque autem pergebant, quæ parata erant, hilariter " comedentes," and then he goes on to say, evidently following the narrative of the Saxon Chronicle, " Vidit " igitur gens Wincestre exercitum hostilem, superbum " et audacem, juxta portas urbis transeuntem, et cibum " quem ultra L. milliaria a mari conquisiverat, et spolia " quæ a bello victis acceperat, secum deferentem. Rex " autem Adelred cum mæstitia et confusione erat ad " *firmam suam* in Salopscire, sæpe rumorum sauciatus " aculeis." It is a reasonable inference that Henry of Huntingdon employs the term "firma" in this passage as the equivalent in his opinion of the Anglo-Saxon "feorme," notwithstanding that the Latin term firma had in his time acquired a secondary meaning, namely, a contribution of produce instead of a store of produce. This secondary use of the word "firma" occurs first of all in the Domesday of William the Conqueror, of which the date is probably A.D. 1086, and which speaks of the "firma" of king Ethelred and of king Edward, but the same observation will apply to the use of such a term, as applies to the use of the term vicecomes in the reputed laws of Edward the Confessor. The compilers of the Domesday used the term "firma" in the secondary sense which it had acquired in the Norman period, namely, as the money consideration from the county or the town in lieu of a contribution of produce for the king's use. This commutation money had come to be termed "Firma " Alba" being payable in silver. But neither the

Domesday nor any Anglo-Saxon law speaks of the firma of a shire except in connection with a king, and it is not too bold a conjecture to assume that the origin of the "feorme" or store of produce in each shire was traceable to the fact, that the king found it necessary to have stores of produce collected in certain localities for the support of himself and his court, when he made a progress. Such is also the probable explanation of the manorial parishes of the archbishops and the bishops, which formed suitable halting places for them in making their visitations. The "feorme" of the king in each county was accordingly in the first instance a store of produce collected for the use of the king when he came into the county; or transmitted to him elsewhere in kind for the support of himself and his court. In the next stage it was the annual rent or commutation money paid to the king by the vicecomes, and called the "ferm" of the county, for which the viscount had to account to the king's exchequer in Westminster, and in respect of which the vicecomes was the *firmarius* of the king's dues. He was not, however, a volunteer like the *publicanus* of the Roman system, nor was he a *conductor* of the king's revenues; but the Norman lawyers at once perceived the analogy between the Anglo-Saxon *ferm*, and the *locatio publica* of the Roman law, and they saw no good reason for disturbing the system which had been instituted by the Anglo-Saxon kings. But although the "locatio publica" was at once recognised by the Norman kings, and the "firma" of the county constituted an important branch of the revenues of the Crown, no mention of the recognition of "locationes privatae" by the Curia Regis occurs before the time of Bracton. They were regarded as outside the strict pale of the feudal system, and it would seem that in the reign of Henry II. any account between a fermor of land and the owner of the land, to whom the fermor did not owe homage, had to be tried in the

manor court, and according to Glanville no appeal lay to the king's court. Thus Glanville in the concluding chapter of his tenth book after discussing the contract of *locatio conductio*, says:—

"Predictos vero contractus, qui ex privatorum con-
" sensu fiunt, breviter transigimus, quia, ut predictum
" est, privatas conventiones non solet curia domini
" regis tueri, et quidem de talibus contractibus, qui
" quasi private quedam conventiones censeri possunt,
" se non intromittit curia domini regis, L. X. c. 18."

If the above view of the relations between the Anglo-Saxon word "feorme" and the Latin word "firma" be correct, and the contract "ad firmam" was a contract to pay so much produce annually for the use of the soil or an equivalent in money, then we must suppose that the relation of a *firmarius* to the owner of the soil was either a graft upon the feudal institutions of the Norman land system, or had continued to exist by the side of them. There can be little doubt that a considerable quantity of land forming the endowment of churches and of religious houses was allowed by the Conqueror to be leased out to cultivators of the soil upon condition of their supplying to the church or to the religious house a certain proportion of the produce of the soil. So long as the church or the religious house fulfilled its feudal obligation of furnishing one or more knights with their followers to recruit the forces of the royal army, the king was not solicitous to interfere in its private conventions with the cultivators of its lands, and the king's courts were content to ignore any disputes founded on such conventions. Such seems to have been the condition of things even in the latter years of the reign of Henry II. when Glanville's work was composed.

To what circumstance may we attribute the change in the practice of the curia regis, which Bracton expounds at considerable length? Is it to be attributed

to the infiltration of Roman notions unto the feudal system of land tenure in England, or is the "feorme" a contract as old as the notion of private property in land, and was it in this case an Anglo-Saxon form of tenure, which was again coming into general use during the Angevin period, and was gradually superseding the system of the feud? In the Eastern Empire a great change had taken place in the system of land tenure in the reign of the Emperor Zeno (474–491) by the introduction of the contract of emphyteusis, with the economical object of encouraging the clearing of land and its cultivation, in order to meet the growing demands for agricultural produce on the part of an increasing population. There are some persons who regard the feudal system of land tenure as a barbaric adaptation of the contract of emphyteusis, and hold the term "feud" to be nothing more than a corrupt abbreviation of emphyteusis, a contract which the Franks found ready at hand, when they overran Gaul, and which they made the basis of their military system. The contract, however, of emphyteusis was unknown to the Theodosian code, which was alone received in England before the Anglo-Saxon invasion, whilst the contract of locatio conductio was well known to that code, and the system of *locationes privatæ* was recognised by the Roman tribunals long before the Romans evacuated Britain. There is no difficulty therefore in regarding the system of leasing land for a term in England as a Roman institution, precisely as the invadiation of land was introduced into England by the Roman usurers, who followed in the train of the Roman proconsuls, and it inherits from the Roman law in the present day its appellation of "mortgage," the Norman equivalent of the Latin "mortuum vadium."

Another explanation of the importance, which the "locatio privata" of land had acquired in Bracton's time as contrasted with that of Glanville, may be sought in

the vast expansion which the specific jurisprudence of contract had acquired under the teaching of the law school of Bologna. Glanville treats the debt "ex causa "locati et conducti" as founded on a private convention, which the king's court did not recognise as the ground of an action at law, whereas in Bracton's time the convention had been elevated into a contract, which could be the foundation either of an actio locati or an actio conducti in the Curia Regis. Feudalism was no doubt founded on the early Roman conception of a contract, but it was essentially unsocial towards the later offspring of the same parent, and it acknowledged no kinship with them. The result was that as the law of contract became developed and new facts or conventions came to be enforced in the more advanced stages of Roman jurisprudence, there grew up a family of legal contracts outside the feudal pale and cast in another mould than that of personal service. The Statute of Merton passed in the 18th year of King Henry III. gave a great impulse to the application of the contract of "locatio conductio" to land, inasmuch as it empowered the owners of the soil to convert into arable land extensive districts, over which their feudal tenants had heretofore enjoyed a common right of pasture, and on that ground had barred for a long time the insertion of the ploughshare into any part of them. It is probable that the king's justiciaries, one of whom, William de Ralegh, had drawn up the Statute of Merton, thought it inconsistent with the due administration of justice to leave the settlement of disputes arising out of the new forms of contract solely to the jurisdiction of the manorial courts.

The term "mortgage" has been already alluded to as a Norman equivalent of the Latin term "mortuum "vadium." This is a remarkable instance of the caprice of English legal nomenclature, for this barbarous term "mortgage" has not merely survived to our time, but

having passed into the chrysalis state it has acquired the butterfly form, and would fail to be recognised by the jurists of Glanville's time, who probably under the influence of the new teaching of the Canonists had come to regard the contract of "mortuum vadium" as usurious, and had agreed to stamp it out. The term "mortuum "vadium," however, seems to have had a special vitality, and the mortgage of the present day is treated with all becoming consideration in the highest courts of the Crown.

The custom of pledging lands, which the Anglo-Saxon invaders brought with them into Britain, was no novelty to the earlier inhabitants of the island. There can be no doubt that the older Roman law permitted the owner of land to pledge it with the stipulation, that the creditor should retain the property in satisfaction of the debt, if the debt should not be paid in accordance with the conditions of the loan. I have already alluded to a passage in Xiphilinus, from which it would appear that the usurers in the train of the Roman proconsuls made the British chiefs familiar with this stipulation in the reign of Nero. A century and a half later introduces to us Papinian, one of the most famous of the great jurists of the Eastern Empire, occupying the highest seat of judgment as præfectus prætorio at York in the reign of the Emperor Septimius Severus (195–211). By a curious coincidence a passage exists in a MS. discovered in the early part of the present century by Angelo Maii at Rome, and published amongst the "Vati-"cana Fragmenta" by Bethmann-Holweg in 1833, which gives us the law as laid down by Papinian:

"Creditor a debitore pignus rite emit, sive in exordio "contractus ita convenit, sive postea. Nec incerti "pretii venditio videbitur, si convenerit, ut pecunia "fœnoris non soluta creditor jure empti dominium "retineat, cum sortis et usurarum quantitas ad diem "solvendæ pecuniæ præstitutam certa sit."

The pawning or pigneration of land was thus evidently common in Britain, and the enforcement of the contract by the Imperial tribunals was a matter of course before the Romans evacuated the island, and as the habit of pledging their lands was prevalent amongst the Germanic tribes, the Anglo-Saxons brought no new practice in that respect with them into Britain, neither was it a novelty to the Norman invaders as they left it behind them in Normandy. Whether the objection to the "mor-" tuum vadium" as an usurious transaction, which prevailed in Glanville's time, had also a Roman origin is open to discussion, inasmuch as the Emperor Constantine, in pursuance of his system for the abolition of usury, forbade the further application of the old Roman law of pigneration to land, and substituted a novel law of hypothec. That Constantine's legislation met with a certain acceptation in the courts of the Western Empire is not improbable, but that it influenced the practice of the courts in Britain to such an extent as to bring about the condemnation of the "mortuum vadium" as an usurious transaction is, I think, untenable, for the new law of hypothec would in that case have assuredly become established in England under the same influence, but of this latter law we do not find the slightest trace. For all these reasons it is quite intelligible that we should find the old Roman law of pigneration recognised and enforced in its application to land by the curia regis at the earliest period, when we have any certain knowledge of its procedure. Thus Glanville in discussing the contract of "mutuum" on the security of a pledge, says:

"Creditur quoque mutuo res aliqua sub vadii posi-" tione, quod cum fit, quandoque res mobiles, ut ca-" talla, ponuntur in vadium, quandoque res immobiles, " ut terræ et tenementa, et redditus sive in denariis " sive in aliis rebus consistentes;" and in the next section he adds, "Item invadiatur res quandoque ad ter-

" minum, quandoque sine termino: item quandoque " invadiatur res in *mortuo vadio*, quandoque non. " *Mortuum vadium* dicitur illud, cujus fructus vel " redditus, interim percepti, in nullo se acquietent." Lib. X. cap. vi. § 1 and 2.

Further, Glanville goes on to state that the mortgagee is bound not to allow the thing mortgaged to become deteriorated, whilst it is in his possession, and if it be land, which requires some expenses to be incurred either by feeding cattle upon it or by manuring it, such expenses must be matter of convention between the creditor and the debtor. This looks very like early Roman law arrested in its growth by the feudal system, which kept out of England the relaxations introduced by the later Imperial system, under which the courts were empowered to award such expenses as to them might seem reasonable. But whence arose the expression " mortuum vadium "? We are forbidden to refer it to an ecclesiastical source, unless indeed it was a term of recent origin in Glanville's time, invented by the clerical judges with a view to discredit a species of pawn, which the Church condemned and which it was desirous that the curia regis should discountenance. And thus it happened that Glanville, after again laying it down that the curia regis ignored all such transactions as private conventions, proceeds to define the " mortuum vadium " more precisely.

" Cum vero res immobilis ponitur in vadium, ita " quod inde facta fuerit seisina ipsi creditori et ad " terminum, aut ita convenit inter creditorem et debi- " torem, quod exitus et redditus interim se acquie- " tent, aut sic, quod in nullo se acquietent. Prima " conventio justa est et tenet, secunda injusta est et " inhonesta, que dicitur *mortuum vadium*, sed per " curiam domini regis non prohibetur fieri, et tamen " reputat eam pro specie usure. Unde si quis in tali

" vadio decesserit et post mortem ejus hoc fuerit pro-
" batum, de rebus ejus non aliter disponetur, quam
" de rebus usurarii." L. X. c. viii. § 6.

It would appear as if the discredit, into which the contract of "mortuum vadium" had thus fallen in Glanville's time, coupled with the possible confiscation of the land to the Crown, if it was still in the mortgagee's possession at his death, had caused it to be discontinued, and that instead of an explicit invadiation of land the practice in Bracton's time was to substitute a conditional donation, namely a donation of land, which should cease to be operative, if the donor should pay back to the donee a certain sum of money on a given day. In like manner Britton ignores the term "mortgage" and treats of the contract under the head of conditional gifts, when he says, "if a gift is made on such a condition, that, if
" the donor shall pay so much on a certain day and at
" a certain place, the gift shall return to the donor, and
" if not, the land shall remain in fee with the creditor
" and his heirs." L. II. ch. v. § 14. Nevertheless Bracton does not altogether discard the use of the term "pignus," nor does Britton discard the use of the term "gage" as descriptive of land, of which a donation had been made subject to the condition, that the land should be conveyed back to the donor on his refunding the purchase money. It might have been expected that the discredit into which the term "mortuum vadium" had fallen during the Angevin period would have caused it to be expunged from the vocabulary of English law, yet strange to say the term was rehabilitated by Littleton and Coke, who must have lost sight of its origin, and under their countenance it has come back into use as a generic term for a conditional donation of land, whether the fruits of the land are to go to the mortgagor or to the mortgagee pending the refunding of the purchase money. Lord Coke must have been a master of dry

humour, if he was not ignorant of the real origin of the phrase, when he endorsed Littleton's novel exposition of the term, that it signified that the estate was *dead* for ever to the mortgagor, if he failed to fulfil the conditions under which he had pledged it.

It has been suggested by an able writer on law that the term "vadium mortuum" in its application to the "pigneratio" of land may have been borrowed from the Anglo-Saxon law of distress (naam). The author of the Mirroir des Justices says:

"Deux maniers sont de Naams, naam morte sicome
" des blees, vine et autres tielx chateix, et naam vief
" sicome de home, beste et tielx vife choses."

Upon this hypothesis the term "vadium mortuum" would properly be applicable to every invadiation of land as being a *dead* pledge for the debt, but Glanville's explanation of the phrase is supported by the Ancienne Coutume de Normandie, of which an admirable edition has been very recently published by Mr. William Laurence de Gruchy, juré-justicier of the Royal Court of the island of Jersey.[1] The Latin text of this ancient "coutume," which was probably compiled in its present form towards the end of the thirteenth century, is to this effect, p. 273:

"Notandum insuper est, quod vadiorum quoddam
" vivum, quoddam mortuum nuncupatur. Mortuum
" autem dicitur vadium, quod se de nihilo redimit vel
" acquitat, ut terra tradita in vadium pro centum so-
" lidis, quam cum obligator rehabere voluerit, acceptam
" pecuniam restituit in solidum. Vivum autem dicitur
" vadium, quod ex suis proventibus acquitatur, ut
" terra tradita in vadium pro centum solidis usque ad
" tres annos, quæ, elapso anno tertio, reddenda est ob-
" ligatori; vel tradita in vadium quousque pecunia
" recepta de ejusdem proventibus fuerit persoluta."

[1] Jersey: Charles Le Fevere, St. Helier, 1881.

Backed by this authority, Glanville's explanation of the phrase "vadium mortuum" has very strong claims upon our acceptance as presumably correct, and, further, it may be assumed that the phrase "vadium mortuum" was of Roman origin, for no mention of it occurs in the earliest collection of Etablissements et Coutumes de Normandie, published for the first time in 1839 by M. Marnier from a manuscript now in the National Library in Paris, but formerly in the library of Sainte Geneviève.

Bracton's work, for reasons which are not known to us, has not been completed in accordance with his original design, as avowed in several places. For instance, in his treatise De Actionibus, f. 105. b., he promises to treat below of the plea of forbidden distresses (placitum de vetito namii), which he has omitted to do. We are not therefore entitled to infer from the silence of Bracton touching the pledge of land under the condition that the mortgagee was to take the fruits of the land without setting them off against the debt, that it had totally fallen into desuetude in his time; and perhaps Lord Coke, in his antipathy to the Norman element of the law of England, was interested in repudiating the ancient interpretation of the phrase, as being a Norman perversion of it. On the other hand, a more recent school of jurists have wandered further away from Glanville, and have contended that the "mortuum vadium" was introduced into England upon the common law principle of conditions, rather than after the Roman doctrine of the pignus. Why such a strained view of the origin of the contract of mortgage should have been adopted by a writer so learned as Hargrave it is not easy to divine, unless it was considered by him to furnish to the courts of the Crown a groundwork for favoring the equity of redemption as against the right of foreclosure in cases, where the conditions of redemption had been imperfectly stated in the mortgage deed. A writ of entry, according to Bracton, proceeded in such a case upon the assumption

that the tenant, against whom it had been sued out, held the land for a term which had passed, upon which writ, however, a plea might be given in by the tenant, which at once challenged the title of the claimant, and converted the proceedings into a trial of right, precisely as if they had been commenced by a writ of right.

Bracton proceeds in the next following book to treat of the plea of Right (de Recto), and the first treatise is extremely interesting from the light which it throws upon the process, by which a new spirit was infused into the feudal institutions by the Crown authorising the viscount to hold cognisance of pleas of right in the county court in the first instance, when the lord's court was in default, and by the Crown in cases, where there was just ground, allowing the argument to be transferred from the county court to the curia regis. There is a slight variation observable in the title which is prefixed to this book in Tottell's edition, as compared with the title in the table of contents. The latter coincides with the title in the Rawlinson MS., C. 160. It is possible that the title in Tottell's edition is not a part of the original work; but if that be the case, then it may be conjectured with good reason that the fifth book was originally a treatise De Recto, of which the respective treatises De Essoniis, De Defaltis, and De Exceptionibus were component parts. It would be premature to discuss this question on the present occasion, as the bulk of the fifth book will form the sixth and last volume of the present edition, and it will have sufficed for my immediate purpose to have called the reader's attention to the title of the fifth book. I may, however, notice that the treatises, to which distinguishing titles are prefixed in Tottell's edition, are continued, in MS. Rawlinson, C. 160, without any distinguishing title, as if they were constituent parts of the Tractatus de Recto.

It seems not improbable, that in Bracton's time the courts of the lords of the smaller manors were becoming

inefficient from an increasing reluctance on the part of the tenants of the manor to obey the summons of the bailliff to do suit at the manor court, in other words to attend and form a court. Other causes also were in operation to render the minor courts unequal to their original duties; in some cases the lords were unwilling, in others they were unable to do full justice to the plaintiff, as it was necessary that both parties should live within the manor to found the jurisdiction of its court. It would seem, accordingly, as if the first step on the part of the Crown had been to constitute the court of the viscount a superior court to hear the complaints of parties, where the inferior court had made default. The process of change, whereby the viscount drew into his court all questions of proprietary right, was gradual. The Crown did not in the first place set aside the manorial court, where the lord was willing and able to declare the right between the parties, but only where after due notice from the serjeant of the king the inferior court continued in default. Further, we learn from Hengham Magna, ch. 3, that most lords were content to waive their jurisdiction respecting titles to land, as little profit accrued to them from holding such pleas in their courts. Whenever, therefore, the manorial court, continued in default the viscount was authorised by a writ of the Crown to assume jurisdiction over the case, but even in this stage of the proceedings the lord might appeal to the king's justiciaries to stay proceedings in the viscount's court, which in most cases they refused to do. Further, the course of proceeding in the viscount's court, when it had been set in motion by a claimant, was extremely considerate towards the tenant in giving him full time to appear and to defend his tenancy, and each viscount's court had to observe the customs of the county, which the king's justiciaries on appeal treated with the greatest respect. So far each county retained one of the characteristics of the ancient shire, namely, a formal

independence in its manner of giving effect to new principles in the administration of justice under a king's officer instead of its ancient ealdorman. It would appear that in a plea of right in the viscount's court it was competent for the claimant or the tenant to maintain his title either by wager of battle or by putting himself on a great assise, in which latter case a writ of peace might be sued out by the tenant to suspend further proceedings until the coming of the king's justiciaries. Meanwhile a writ had to be taken out by the claimant for the viscount to summon four knights, who should choose on their oath twelve of the more loyal knights of the visne to make a recognition at the next iter of the king's justiciaries, and so carefully was the *judicium parium* kept in view, that, if the tenant held in gavelkind the four knights were to be chosen from such persons as held in gavelkind, and they were to choose twelve recognisors who also held in gavelkind. It was competent, however, for either the claimant or the tenant to petition the Crown for a writ to transfer the cause from the viscount's court to the king's court. This writ was granted, at the prayer of the claimant, where the tenant belonged to a privileged order, such as the Templars or the Hospitallers, who were not bound to answer to any plea except before the king himself or his chief justiciary, or wherever the viscount was himself interested or the question of right was very difficult to determine. Further, where battle had been joined in the county court contrary to the custom of the realm the cause might be removed from the county court to the royal court on petition of either of the parties. Bracton is silent as to any penalty to be incurred by the viscount for failing to do justice to a plaintiff in the county court, but Britton lays it down that if any viscount or his deputy failed to do justice to a plaintiff, if he farmed his office, he was punishable by fine and imprisonment; but if he held his office in fee he

should lose his franchise and make satisfaction to the plaintiff in damages L. VI. ch. iv. § 8.

Two rules of practice, which have been observed in English courts until very recently, are traditions of Bracton's time. According to one the service of a summons was to be made upon the defendant at his principal domicile, where he had several domiciles in a county; according to the other, an interval of fifteen days was to be allowed to elapse between the service of a summons and the necessary appearance of the party in court; but both these rules were heirlooms of the early Roman settlers in Britain, which the Anglian immigration was glad to maintain. There were, however, in Bracton's time certain cases of exception, where a defendant might be summoned to appear within a shorter interval than that of fifteen days, as for instance in cases of vacant churches, where lapse might take place under the decree of the Council of Lateran, or in the case of merchants who could not wait for tardy justice, and to whom justice was on that account administered in courts of pepoudrous. But in all cases where a party was served with a summons to appear within fifteen days he was entitled to essoin himself, and Bracton accordingly proceeds to discuss the nature of essoins in the next following treatise. It may deserve notice that the last sentence of Bracton's first treatise on a writ of Right does not occur in MS. Rawlinson, C. 160, whilst it neither seems apposite to the place where it is inserted, nor is the promise of Bracton to discuss it hereafter fulfilled. Britton also, L. VI. ch. iv. § 11, seems to have been misled by the passage in Bracton, and to have inserted in his text a similar promise, which Mr. Nichols in his edition of Britton, vol. 11, p. 333, has commented upon as not having been fulfilled by Britton.

The second treatise of the fifth book treats of essoins, a term of law of which the origin is somewhat obscure, for it is difficult to accept Sir Henry Spelman's deriva-

tion: Essonium or exonium from *ex* privativum and *soing* cura, that is, ab angustia, cura, vel labore liberare. The noun "essonium" seems to have been used in Bracton's time to signify an excuse for not appearing in court to a summons, and the verb "essoniare" to make excuse on behalf of a person for not appearing in court to a summons. The same train of thought which has suggested that "feud" is a Frank abbreviation of "emphyteusis" has suggested that "essoin" is derived from the Greek ἐξόμνυσθαι, whilst other etymologists have discovered in "essoniare" a medieval corruption of the Latin exonerare, and cite in support of their view the Norman form of the word "exoine." But it is probable that the primary meaning of the word "essoin" was not an excuse for not appearing, but an obstacle, which prevented the party summoned from appearing in court on the day appointed, and that the earliest form of the word was "soinus," which was a Latinised form of the Germanic "sonnis." Thus to carry back our inquiry systematically, let us commence with the Costumal known as the Laws of Henry I., which, although it may have been compiled at a period subsequent to the reign of that king, purports to be framed upon the customs of his time. We find in these laws several instances of the use of the word "soinus," of which the following passage may be selected as an illustration:—

"Si de nominatis placitis terminum non susceperat, "nisi competens *soinus* eum detineat, et non venerit, "omnium reus sit, de quibus placitum suscepit."

I have quoted the above passage from the text of the Ancient Laws and Institutes of England as edited by Thorpe, who refers his readers to another reading of the word, namely "essoinus" as found in MSS. Selden and Twysden. I prefer, however, the reading of "soinus," as it connects the language of the Anglo-Saxon law more immediately with that of the Capitularies of the Emperor Charlemagne and with the Laws of the Salian and

Ripuarian Franks. Thus in the capitularies of Charlemagne, c. vi. § 211, it is provided: Si quis ad mallum legibus mannitus fuerit, et non venerit, si eum *sonnis* non detinuerit, quindecim solidis culpabilis judicetur, similiter ad secundam et tertiam. So a law of the Salian Franks, Tit. I., provides: Si quis ad mallum legibus dominicis mannitus fuerit, si eum *sunnis* non detinuerit, 600 denariis, qui faciunt solidos quindecim, culpabilis judicetur. So a capitulary of the Ripuarian Franks of the year 803, Tit. V., provides: Si quis ad mallum legibus bannitus fuerit et non venerit, si eum *sonnis* non detinuerit, quindecim solidis culpabilis judicetur. Sic ad secundam et tertiam. I have quoted these passages from Walter's Corpus Juris Germanici Antiqui, and it is obvious that the laws are all derived from a common source. At a period about a century later the monk Marculfus drew up his formulary, and we find him using the word "sunnia" in a similar sense in the following passage: "Ipse nec venisset ad placitum "nec nulla sunnia nuntiasset," l. II., § 37. As Marculfus dedicated his Formulary to Pope Lando, who became Pope A.D. 912, and was succeeded in the same year by Pope John X., this circumstance enables us to fix the date of this passage with reasonable accuracy. But after all, if we are able to establish the fact that the words "sonnis" and "sunnia" were in use amongst the Franks in the sense of impediments sufficient to excuse a person for non-appearance upon a summons to attend his lord's court, it does not follow that the Romance form of exoigne was not the offspring of their supposed alliance with the Latin word "exoneratio," pronounced "ex-"oniatio." In the Longobardie code the word assumed the forms of "sumnis" and "sommnis" and the modern German word "saumniss" signifies in the present day an impediment causing delay. In England, on the other hand, the word not merely assumed a certain counterfeit dress as if it were of Latin origin, but it

changed its meaning to suit its new dress, and came to signify an excuse by reason of an impediment instead of its proper meaning of an obstacle on the way.

Whatever may have been the origin of the word "essoin" it seems probable that the practice of allowing three essoins to each party in a cause was a tradition of the Carlovingian period, for the further practice of Glanville's time of taking into the hands of the king the lands of the tenant, if he made default a fourth time, was also a provision of the capitularies of Charlemagne. A fourth essoin was only allowed in a case of languor, that is, of a tedious illness, perhaps incurable. I am disposed to think that the term essoin was originally confined to an excuse on the ground of bodily illness, first of all for illness on the way in coming to court, in which case the essoin might be made by a single messenger; secondly, for illness confining the party to his bed, which was to be certified by two messengers; and thirdly for languor or permanent illness, the excuse of which was only admitted after the sick man's condition had been verified by four credible knights or vavasours. The other excuses for non-appearance in court by reason of detention in a prison or of attendance on the king in war, or of a pilgrimage to the Holy Land or to St. James' of Compostella, seem originally to have been classed under the head of "delaiements" in the earliest Norman Coutumier, whilst in Glanville's time they rank under the general class of essoins.

There can be little doubt, I think, that juridical science in England during the reign of Henry II. had taken the lead of juridical science in Normandy. The field for improvement was larger in England, whilst the hands of the King of England were more free than the hands of the Duke of Normandy, and so far from England borrowing her legal institutions from Normandy, the Kingdom imparted its improvements to the Duchy. When Rollo and his Norsemen settled in

Neustria and did homage to king Charles the Simple of France for the Norman Duchy, they accepted the feudal institutions of Neustria. Duke Rollo, for instance, did not invent the office of vicecomes. He found it ready to his hand. In like manner William the Norman was no less fortunate on his arrival in England, as he found the allodial ealdorman and the scirgerefa already converted into a comes and a vicecomes by Canute the Dane. But the earls and the viscounts in England were not identical with the counts and the viscounts of continental feudalism. The strong hand of the Danish conqueror had substituted for the immediate territorial connexion between the ealdorman and the scirgerefa a personal connexion only between the earl and the viscount, by constituting the earl the personal superior of several viscounts. William the Norman went a step further, and snapped the official link between the earl and the viscount, and constituted the viscount the fiscal officer of the king, and his sole judicial representative in the county court, reserving for himself or for a justiciary sent on behalf of the crown the cognisance of the more important pleas. So far the king had succeeded in constituting himself the supreme fountain of justice and the personal guardian of the peace of his realm. But in these matters he had made little or no advance beyond the institutions which he had left behind him in Normandy; he had merely assimilated in respect of the counties the institutions of his newly acquired kingdom to those of his hereditary duchy. The institution of a great justiciar of England, which was forced upon the Norman king by his occasional absence from England, was the starting point of a new system, which, although it did not acquire any striking development during the Conqueror's reign, was pregnant with important consequences after the justiciar had become a permanent functionary. The creation of the justiciar's office was in fact a new point of departure; it inaugurated a new

principle of government distinct from that of the sword; it initiated the reign of law, and its significance was discovered as soon as Roger le Poer, bishop of Salisbury, was advanced from the office of the king's chancellor to that of chief justiciar in the 7th year of king Henry I.

In no department of legal procedure is the progress of juridical science since the reign of Henry I. more evident than in the regulation of the right of essoin, a right of vital importance to the security of property, and most essential as a barrier against the abuse of the judicial autonomy of the vicecomes. Glanville had evidently attached great value to the regulation of the right of essoin, but Bracton has devoted a separate treatise to the subject, which Glanville was content to discuss by the way, and it would seem as if the attention of the king's justiciaries had been directed in the early part of the reign of Henry III. to the simplification of the procedure, and in pursuance of the recognition of the "attornatus" in the king's court to the shortening of the delay incidental to the system of essoins. It has been already observed in the introduction to the third volume of the present work that the office of "attornatus" was first recognised in England during the time when Hubert de Burgh was chief justiciar (1215–1232). The "responsalis" had been recognised in the king's court in Glanville's time. The responsalis, however, could only be appointed by the principal party himself appearing in court before the king's justiciaries resident in the Bench, and again the functions of the responsalis were limited to the special business of the particular suit. The case was otherwise with the attornatus. His powers were more ample, and they might be general, so as to provide for the case of his principal being absent in the king's service abroad, or on a pilgrimage to the Holy Land or to St. James of Compostella. The attornatus might also be appointed by letters of attorney, so that the institution of such an officer made a great

inroad into the feudal system, under which the feudatory was liable to be summoned to appear in person before the lord's court, and in default might risk the forfeiture of his feud.

It will be seen that some progress had been made in the time of Bracton in simplifying the procedure in the matter of essoins. It should be borne in mind that Bracton discusses the law of essoins in their application to real actions, in which questions of difficult and doubtful right were sure to arise. A first step, however, had been made in limiting the exercise of the right of essoin, when a great assise was substituted for the duel. The object of the limitation, according to Glanville, was to save labour and to reduce expense. "Assisa enim," are his words, "tot non expectat esso-
"nia, quot duellum, ut ex sequentibus liquebit, ac per
"hoc et laboribus hominum parcitur et sumptibus
"pauperum." L. II. ch. vii. § 1.

Further, in an assise of novel disseysine no essoin was allowed. The reason given by Glanville was that the courts did not spare a person who had taken the law into his own hands. "In hac autem recognitione nul-
"lum essonium admittitur. Prima enim die sive vene-
"rit sive non is, qui disseysinam fecerit, procedit
"recognitio, quia hic nemini parcitur, nec majori, neque
"minori, nec etiam warrantus expectabitur." L. XIII. ch. xxxviii. § 1. Bracton himself also rests the denial of an essoin to a disseysor on the ground of the disseysine being an act of spoliation, for which the party disseysed might claim summary redress. "Revera non
"jacet essonium in odium spoliationis, quia denegari
"debet eis dilatio." F. 340 b. And here perhaps it may be apposite to suggest a distinction between an assise of novel disseysine and a recognition of novel disseysine. An assise of novel disseysine was a form of suit instituted by King Henry II. with the advice of his council; a recognition of novel disseysine was a part of

the process of such suit. An assise of novel disseysine when instituted by King Henry II. was limited to disseysines which had taken place since the last voyage of the king into Normandy, but this limit might be varied by an ordnance of the king in council. "Postremo," says Glanville, "de illa recognitione, quæ appellatur de "nova disseysina, restat dicendum. Cum quis itaque "infra assisam domini regis, id est, infra tempus "a domino rege de consilio procerum ad hoc constitu-"tum, quod quandoque magis, quandoque minus cen-"setur, alium injuste et sine judicio disseysiaverit de "libero tenemento suo, disseysito hujus constitutionis "beneficio subvenitur et tale breve habebit." L. XIII. cap. xxxii.

The king's writ, which follows this passage, specifies the last voyage of King Henry II. to Normandy as the limit of time, within which the disseysine must have taken place. This limit, however, had been curtailed in the time of Bracton by an ordinance which is recorded in the Patent Rolls of 21 Henry III., and by which the time was limited to the last return of King Henry III. from Normandy.

Medical science, if it existed in any degree in England at this time, was not invoked in aid of justice to decide the question, whether the essoinee was fit in point of health to comply with the summons of the court. That he should fall sick by the way was a common occurrence, seeing that the parties summoned lived for the most part in a country where there were no high roads, where the bridges were frequently broken down, and the rivers were out in flood, and the traveller had to sleep in the open air. The occasions accordingly for an essoin of sickness by the way would not be unfrequent, and it was held sufficient that a single essoiner should appear at the court to announce the sickness of the absentee. In such a case the essoiner might be required to find sureties or to pledge his faith, that he would present his

principal in court on a further day. This might be twice repeated in a case of bed-sickness, but after the third essoin the party was ordered peremptorily to appear either in person or by a responsalis authorised by him "to win or to lose" the cause. The responsalis, whose title was borrowed from the Roman law, had, as already observed, a limited authority. He does not appear in Glanville's time to have been required to produce letters mandatory, if he were a blood relation of the party, but after the "attornatus" had come upon the scene, the viscount might send four knights to visit the sick man and to require him to appoint an attorney. The responsalis, however, does not disappear altogether from the scene, as it was sufficient in a case of languor, where the cause had been adjourned for a year and a day to the Tower of London, that a responsalis should appear on behalf of a party on the day appointed. The difficulty in a case of languor, where the cause was adjourned for a year and a day by the king's justiciaries, was to determine to what court it should be adjourned, with a certainty that the court would be sitting on the day appointed, for there was no certainty as to the judges itinerant being present in the county on a given day, neither was there any certainty that any justiciary would be resident at the Bench at Westminster on a given day; the result appears to have been that the cause was adjourned to the Tower of London, where the parties were to appear before the Constable of the Tower, an officer bound to be in continual residence in the Tower. We learn from the passage in Bracton, f. 353 b., which explains the reason of this recourse to the Constable of the Tower, that a justiciary was not continuously resident throughout the year at the Bench. The course of proceeding after the parties had appeared at the Tower seems to have been in this wise. The constable certified their appearance and gave them letters to the justiciaries, if any were in residence at the Bench, and

if none were then in residence, the letters were to be presented to the justiciaries who should come first into residence, and thereupon the justiciaries at the Bench were to transmit the cause to the justiciaries itinerant, if they were in the county where the cause originated, or they were bound to hear it themselves, if there were no justiciaries itinerant in the county.

The adjournment of the cause to the Tower of London in the case above mentioned was made for a year and a day. In the Carlovingian Capitularies the provision is simply "si infra annum non venerit." The practice of a year and a day was observed in Glanville's time. How it originated does not appear, but a day was probably added to the year in consideration of the fact that every solar year consisted of three hundred and sixty-five days and six hours. Copernicus had not lived at the time when Bracton wrote, and astronomers still relied on the observations of Hipparchus, which had led Ptolemy to devise a planetary system, of which the sun was the master planet, revolving round the earth and constituting by its revolution the alternation of day and night. But Julius Cæsar had ascertained during his sojourn in Alexandria that a later school of Egyptian mathematicians had discovered certain errors in the Ptolemaic calculations, and accordingly he decided on his return to Rome to correct those errors and to introduce a new and amended calendar. It will be rather a surprise to the reader to find a chapter in the present volume dedicated to a scientific exposition of the Ptolemaic system. Bracton has already intimated that the Julian calendar was in use in the English courts of justice by stating, that the justiciaries were accustomed in granting a further day after an essoin to appoint a day after or before a given festival, or after or before the ides or the calends of a given month; and, further, he had remarked that if the year should be bissextile, the day appointed might prove to be unlawful, f. 357. A further

perplexity arose in calculating the year and a day in the case of an essoin for languor, when the party had been assigned to appear at the Tower within a year and a day. How was the period so assigned to be calculated when the year in which it was assigned was bissextile, and it consisted of three hundred and sixty-six days instead of three hundred and sixty-five days? Was the last day to be regarded as an excrescent day, or as an ordinary day of the current year? The origin of the term bisextus dates from the Julian reform of the Roman calendar. The year of Numa Pompilius consisted of three hundred and fifty-five days, into which a month termed Mercidonius was intercalated every second year after the time of the Decemvirate, subject to certain variations in the number of its days so as to constitute an average year of three hundred and sixty-six days and six hours; but this average being astronomically too great, twenty-four days were omitted in every twenty-four years, so as to diminish the average to three hundred and sixty-five days and six hours. This very complicated method of calculating the legal year at Rome continued down to the time of Julius Cæsar, who recast the Roman calendar, establishing twelve months in the place of ten, and dividing the ordinary year into three hundred and sixty-five days; and, further intercalating a day of twenty-four hours in every fourth year. As under the old system of the Decemviral year the month Mercidonius had been intercalated immediately after the 23rd February, the anniversary of the Terminalia, Julius Cæsar directed the 24th day of February to be doubled in every fourth year, and as the 24th day of February was the sixth day before the calends of March the double day was styled thenceforward bi-sextus. Under the Roman system this double day was calculated as a single day, and a person born at any hour of the double day was born on the sixth day before the calends of March. "Cum bisextum kalendis " est," says Celsus, "nihil refert (utrum) priore an pos-

" teriore die quis natus sit, et deinceps sextum ka-
" lendas ejus natalis est: nam id biduum pro uno die
" habetur; sed posterior dies intercalatur, non prior;
" ideo quo anno intercalatum non est, sexto kalendas
" natus; cum bisextum kalendis est, priorem diem na-
" talem habet." 98.

It might have been reasonably expected, that the king's justiciaries would have had no difference of opinion as to the mode of dealing with the excrescent day in leap year, but as a writ of right was a proceeding under the feudal law, it seems to have been doubted amongst the king's justiciaries, whether the calculation of the Roman law was applicable to an essoin for languor in a proceeding under a writ of right. There seem to have been two difficulties, first as regarded the usual year of three hundred and sixty-five days and six hours, whether an appearance during the six hours was an appearance within a year and a day, and secondly whether in leap year an essoinee for languor was within time, if he appeared on the three hundred and sixty-seventh day. Bracton was apparently in favour of the former view and adverse to the latter. These doubts were destined to be appeased in England by a statute of the realm, the date of which is left in some uncertainty, for it is open to doubt whether the text of the statute itself has been preserved. It has been customary to print amongst the statutes of the realm a document, which in point of form has the appearance of a writ addressed by the king to his justiciaries, and which in the early editions of an English text of the statutes has been assigned to 21 Henry III. So early a date, however, of the statute cannot well be reconciled with Bracton's text, as the king's writ was calculated to put an end to the doubts, which Bracton states to have been entertained by some of the king's justiciaries at the time when he composed his treatise De Essoniis. Two other dates, however, have been assigned to the so-called statute, namely, 40 Henry III. and 44 Henry III.

The first rests on the authority of a text preserved in the Red Book of the Exchequer originally kept in the chapter house at Westminster; the second rests on a text preserved in MS. Cotton Claudius, D. II. in the British Museum, which has been copied by Hawkins and by Ruffhead into their respective editions of the Statutes. The editors of the recently revised Statute Book have adopted the text of the Red Book of the Exchequer, which is as follows:

"H. Dei gratia Rex Anglie, Dominus Hybernie, Dux "Normannie, Aquitanie, et Comes Andegavie justici- "ariis suis de Banco salutem. Sciatis quod cum in regno "nostro de anno et die qui languidis per breve nos- "trum (de Recto) inplacitatis prefigi consuevit, quo "modo scilicet et a quo die anni precedentis in alium "diem anni sequentis debuit annus ille et dies in "anno bisextili accipi et computari, diu exstiterit "dubitatum; nos, volentes uniformitatem ubique in "regno nostro super hoc observari, et periculis liti- "gantium precaveri, providimus et de consilio fide- "lium nostrorum statuimus, quod ad delendam de cetero "omnem super hoc ambiguitatem computetur dies ex- "crescens in anno bisextili in ipso anno; ita quod "propter diem illum non occasionentur aliqui inplaci- "tati, set sit et habeatur de mense illo, in quo ex- "crescit, et contineatur dies ille excrescens in integri- "tate anni predicti; et computentur dies ille et dies "proximus precedens pro unico die. Et ideo vobis "mandamus, quod hoc coram vobis publicari et de "cetero faciatis observari. T. me ipso apud Wynde- "soram ix° die Maii a° regni nostri xl^mo.

On the other hand, the text of the so-called statute preserved in MS. Cotton Claudius D. 11 in the British Museum purports to have been issued in the forty-fourth year of Henry III., the testimonium clause being of this tenor: Teste me ipso apud Westm. anno regni regis "H. quadragesimo quarto," whilst the text commences Rex "Justiciariis suis de Banco salutem." It is hardly neces-

sary to observe that this is the text of a writ addressed to the king's justiciaries, and that the original testimonium clause must have contained the words "anno regni nostri," instead of the words "anno regni regis Henrici." This alteration in the testimonium clause is probably due to the desire of the scribe of the MS. to place on record the name of the king, which does not occur at the commencement of the writ.

If we assume that this document, as printed in the last revised edition of the Statutes, was issued in the 40th year of King Henry III., the said 40th year would be a bissextile year, as Henry III. came to the throne A.D. 1216 and it would be reasonable that such a statute should be forthwith communicated to the justiciaries, who were about to set out on their iter with a view to its publication by them and to their acting upon its provisions.

The course, which was pursued in the case of the previous Statute of Merton (20 H. III.), may throw some light on the practice in such cases. King Henry III. held a court at Merton on 23 January 1235, in which certain constitutions were established by him with the consent of the magnates. Those constitutions were forthwith embodied in a Royal writ directed to the viscounts throughout the realm and to the justiciaries in Eyre, and the writ was issued to them on 30th January next following. By this writ the new constitutions were directed to be published in every county court and to be firmly kept. The text of this writ was further enrolled and is now preserved in the Close Rolls of 20 H. III. m. 18 d. The fact of this enrolment enables us to verify the accuracy of the text of the constitutions of Merton as preserved in MS. Claudius Cotton, D. 11. It is from the same MS. that Hawkins and Ruffhead have both derived their text of the so-called Statute of Leap Year, which purports to have been issued in 44 Henry III. That a writ should have been addressed in that

year for a second time to the king's justiciaries is not improbable from two circumstances: it was in the first place again Leap Year and the justiciaries were about to proceed upon their circuit; in the second place the king had recently reverted to the constitutional practice of appointing a chief justiciary (Justitiarius Anglie), having ruled since 1244 without either a chief justiciary or a chancellor or a treasurer. It was amongst the stipulations of the so-called "Mad Parliament" of Oxford in 42 H. III. that there should be again a chief justiciary, a chancellor, and a treasurer, and in 43 H. III. a justiciary of England reappears after an interval of twenty-six years, whose name is recorded in the Abbreviatio Placitorum of 44 H. III. as holding the office of chief justice. I am disposed to regard the so-called statute of 44 H. III. as merely a fresh issue of a Royal writ of the same tenor as the writ of 40 H. III., and the renewed issue of the writ in that particular year is supported by the style of the king, inasmuch as King Henry III., in the month of October of the forty-third year of his reign, ceded to King Louis X. of France the provinces of Normandy, Anjou, Touraine, Maine, and Poitou, and thereupon discontinued the use of the titles of Duke of Normandy and Count of Anjou. We find the king accordingly described in his second great seal, as well as in the charters after the year 1259, as Henricus Dei gratia Rex Anglie, Dominus Hybernie, and Dux Aquitanie, and such is the royal style in the writ of A.D. 1260 (44 H. III.). I pass by another text of a similar writ contained in the Liber Scacc. Westm. x. fol. 22 b., which has a testimonium clause of a still later date, "Quarto "die Junii anno regni nostri quinquagesimo quarto." If we assume this document to be authentic, it is an instance of a further writ of a like tenor with the previous writs addressed to the king's justiciaries. There was, however, no Parliament sitting at Westminster in the month of June 1270, as we know from the Liber

de Antiquis Legibus, which is preserved in the archives of the Corporation of London, that the Parliament of 1270, which was called for April 27, 1270, was adjourned from the paucity of members in attendance to July 2, 1270.

On a review of these concurring circumstances there can be little doubt, I think, that the various versions of the so-called Statute of Leap Year are in fact repeated issues of the royal writ enjoining the king's justiciaries to observe the statute. Unfortunately the Great Roll of the Statutes, as it is termed, does not go so far back as the reign of Henry III. The statute of Gloucester, for instance, 6 Edward I. (a° 1278) is the earliest statute now extant on any statute roll. But we have not merely a justification in the language of the royal writ of 40 H. III. (providimus et de consilio fidelium nostrorum statuimus) for regarding that writ as the embodiment of a statute, but an important confirmation of that view is supplied by the text of Fleta.

Bracton, in treating of an essoin for languor, has observed that if it be an essoin for non-appearance before the justiciaries on their iter, an appearance on a further day will have to be made before the Constable of the Tower, as the justiciaries may neither be itinerant in the county nor resident at the Bench on a given day. In like manner he briefly adds that the appearance will have to be made at the castle in a county. Fleta, when he comes to discuss the question of an essoin for languor, makes no reference to the Tower of London, but says the essoin is to be allowed for a year and a day, when the party must appear at the castle (apud castrum). He then goes on (L. VI., cap. xi.) to discuss the appearance to be made at the castle, following very much the language used by Bracton as to a reasonable day's journey of the essoinee who has to appear at the Tower, and then he observes:

"§ 2. De anno vero bisextili fit tale breve; rex justi-
" ciariis suis de banco salutem. Sciatis quod cum in
" regno nostro de anno et die quo languidis, per
" breve nostrum implacitatis, præfigi dies consuevit,
" quo modo scilicet et a quo die anni præsentis in
" alium diem suum sequentem debuit annus ille et
" dies in anno bisextili computari, diu extiterit dubi-
" tatum. § 3. Nos volentes uniformitatem ubicunque
" in regno nostro super hoc observari, et periculum
" litigantium præcaveri providimus et de consilio fide-
" lium nostrorum statuimus, quod ad delendam super
" hoc ambiguitatem computetur dies ille et dies ex-
" crescens in integritate in unicum annum et diem, ita
" quod propter diem illum non occasionentur aliqui
" implacitati; et ideo vobis mandamus, quod *hoc statu-*
" *tum* coram vobis publicari faciatis et de cætero
" observari."

It will be seen on comparing this document, which Fleta explicitly describes as a writ, with the text of the so-called Statute of Leap Year in the Statute Book, that they are documents of an identical character, but there is this remarkable feature in Fleta's writ, that it contains the words "hoc statutum observari" whereas the so-called statute has only the words "hoc observari." The conclusion on comparing Fleta's writ with the earlier documents would appear to be that there was a Statute of Leap Year, of which the roll, if it ever existed, has perished, whilst the substance of the statute has been preserved in the writ, which has been entered in the Red Book of the Exchequer.

I have previously stated that there are certain features in Bracton's work which may warrant the theory, that the chapter on Essoins was written before the treatise de Acquirendo Rerum Dominio was completed. The fact that Bracton makes no reference to the statute respecting Leap Year is a strong presumption, that he wrote the

chapter on Essoins before 40 H. III., if we may rely upon the Red Book of the Exchequer for the true date of the Statute of Leap Year. On the other hand, the reference to the confirmation of the election of Earl Richard as king of the Romans being still contingent, which occurs in the treatise De Acquirendo Rerum Dominio, f. 47, warrants us in supposing that treatise to have been composed or at least completed in the early part of the year 1257 (41 H. III.).

I have alluded above to the course pursued in the instance of the Statute of Merton of sending a Royal writ to the king's justiciaries ordering them to publish the statute on their iter. We have but a faint insight into the working of the king's courts during the reign of H. III., and it is somewhat of an enigma to understand how in the absence both of a chief justiciary and of a chancellor the due administration of justice was maintained. The king had no doubt able clerks, and Bracton himself, as we know, was a Royal clerk before he was advanced to the post of a justiciary. The practice during this reign in respect of a new law seems to have been for the Crown to issue a Close Letter to the justiciaries and Letters Patent to the inferior authorities enjoining them to give effect to the new statute, and as the examples of this practice are rare, an instance may deserve to be cited, of which a record is preserved in the Liber de Antiquis Legibus already referred to, as being in the archives of the Corporation of London. We should otherwise have had no knowledge of a statute passed in the 51 Henry III. (a°. 1271) to forbid the Jews to become possessed of any freehold tenements except for their own habitation. The Letters Patent sent on this occasion to the mayor and viscounts of London are preserved in the manuscript above mentioned. They are of this tenor: "H., Dei gratia Rex Anglie, "Dominus Hybernie, Dux Aquitanie, dilectis et fide-"libus suis majori et vicecomitibus Londoniarum et

" omnibus ballivis et fidelibus suis, ad quos presentes " littere pervenerint, salutem. Sciatis quod ad hono- " rem Dei et universalis ecclesie ac emendationem et " utilitatem terre et relevationem Christianorum de " dampnis et gravaminibus, que sustinuerunt occasione " liberorum tenementorum, que Judei regni nostri " clamabant habere in terris, tenementis, feodis, reddi- " tibus et aliis tenuris, et ne nobis seu communitati " regni nostri vel ipsi regno possit de cetero prejudi- " cium generari, providimus de consilio prelatorum, " magnatum et procerum, qui sunt de consilio nostro, " ac etiam ordinavimus et statuimus pro nobis et " heredibus nostris, quod nullus Judeus liberum tene- " mentum habeat in maneriis, &c., &c." I omit the further recitals and provisions of the writ, as the Letters Patent occupy a whole page of the work as edited by Mr. Thomas Stapleton for the Camden Society in 1846; the concluding clause is as follows: "Et ideo vobis pre- " cipimus, firmiter injungentes quod provisionem, ordi- " nationem et statutum predictum publice per totam " ballivam vestram proclamari et firmiter teneri " faciatis. In cujus rei testimonium has literas nostras " fieri fecimus patentes. Teste me ipso apud West- " monasterium xxv° die Julii anno regni nostri quin- " quagesimo quinto." We can have little hesitation, I think, after this instance, to arrive at the conclusion that the so-called Statute of Leap Year which is maintained in the revised Statute Book is not the original statute itself, but a Royal writ founded on the statute and of like authority.

The thirteenth chapter of the treatise on Essoins, in which Bracton explains the peculiarities of the Bissextile year, is very curious. If we are to place the errors of arithmetic, which occur in several parts of this chapter, to the account of Bracton himself, and not of the scribe, who has misread or miscopied Bracton's numerals, we should have to credit Bracton with only a moderate

amount of mathematical attainment, in fact with having omitted to master the first rudiments of arithmetic before undertaking to explain a most difficult problem of the higher mathematics. But I am not disposed to attribute to Bracton himself, but rather to the scribe, the miscalculation of the number of moments in a day in the following passage:—"Hora autem fit ex quad-" raginta momentis et sic fit dies ex novem millibus " et sexcentis momentis." Several MSS. support this reading, but on referring to MS. Crewe (Add. MSS. No. 11,353) in the British Museum, another reading is found, which is in harmony with the laws of arithmetic:—"Hora autem fit ex quadraginta momentis et " sic dies constat ex novem centum et lx. momentis," The division of the hour into forty moments, which Bracton has previously used in his treatise on an assise of mortdancester, fol. 264, has been already discussed in the introduction to the fourth volume of the present work, p. xxx., as having been in use in the University of Bologna in the time of Accursius. I have since ascertained that the division of the hour into forty moments was in use in England in the eighth century, as I shall proceed to show, and that it was based on astronomical principles, which warrant the presumption that it continued in use in England until Bracton's time, and was not a foreign importation of the civilians. One or two other errors of Tottell's text in high numbers may also be put down to the account of the scribe, as it was not unusual for the scribe to omit the numerals of the thousands and to give only the hundreds and the tens. Bracton himself, however, is probably responsible for the omission of the hundreds, where he says that an essoinee ought to appear at the Tower on the sixty-sixth day, when he really has in his mind the three hundred and sixty-sixth day, that is a full calendar year and a day. On the other hand, we have two instances of an opposite practice in stating the high numbers and dropping the low

numbers, which are probably attributable to the scribe, namely, where the text describes the number of days in four solar years as one thousand and four hundred days, instead of one thousand four hundred and sixty-one days. This apparent miscalculation I am unwilling to attribute to Bracton, as in the sentence almost immediately preceding he has described the solar year as consisting of three hundred and sixty-five days and the fourth part of a day.

I have found no direct clue to the authority upon which Bracton has relied in expounding the system of the Julian calendar. His language would not lead us to suppose that he was familiar with the writings either of Censorinus or of Macrobius, the two best authorities on the subject of the reform of the calendar instituted by Julius Cæsar, whilst his fanciful comparison of the Julian year to a serpent with its tail in its mouth savours rather of monkish than of classical lore, and we may not be very far from the mark in conjecturing that he found that illustration in some commentary on the writings of the Venerable Bede, to whom the introduction of the adjective "bissextilis" to denote the year in which the day termed bisextus was intercalated, in other words leap year, is generally attributed. I have not, however, been successful in discovering the metaphor of the serpent in the writings of the Venerable Bede himself, but there have been numerous commentators on his philosophical treatises, of which the widespread study is testified by the copious Gloss of Bredefert of the famous Benedictine Abbey of Ramsey, and by the Scholia of John of Lisieux.

Beda, as is well known, was regarded by his contemporaries as a prodigy of learning. He was born probably A.D. 672, and died A.D. 735. Boniface, the apostle of Germany, Beda's contemporary, calls him the candle sent by God for the spiritual illumination of the church. His Historia Ecclesiastica Gentis Anglorum, perhaps the most

highly prized of his writings, is believed to have been translated into Anglo-Saxon by king Alfred, at least such is the tradition which attaches to the Anglo-Saxon version, which has been printed by Dr. Ingram in parallel columns with the original Latin text of the work. There is no doubt that Beda's learning was very extraordinary for the age in which he lived, and it speaks favourably for the collection of MSS. in the united monasteries of St. Peter and St. Paul at Wearmouth and at Yarrow, in which he passed his life devoted to study, to teaching, and to writing. The epithet "Venerable" appears to have been applied to Beda in the ninth century, and it has been customary since that time always to speak of him as "the Venerable Bede." I have gone thus briefly into the history of Beda with a view to show that he was a writer of great research, whose works, of which he has himself left a catalogue compiled four years before his death, were of the highest authority amongst his contemporaries, and of which the historical portion supplies in the present day the most trustworthy materials for the early history of Britain and the Anglian settlements in it.

Beda, however, did not confine himself exclusively to historical studies, although his philosophical writings are not so widely known nor so generally read as his ecclesiastical history. Beda appears to have composed a treatise entitled De Temporibus A.D. 703, and upon the representation of his brother monks that he had treated the subject too briefly, more especially with regard to the proper determination of Easter, then much controverted, he composed a fuller treatise entitled De Temporum Ratione, A.D. 725, and to this latter work he subjoined a chronicle entited "De Sex hujus sæculi "Ætatibus." It is in the last portion of the chronicle entitled "Sexta Ætas" that Beda treats of the birth of Christ, and supplies a brief record of the reign of each of the Roman emperors down to the ninth year of Leo

Isauricus (A.D. 729) with the date of the accession of each, calculated from the Incarnation of Christ. Beda upon the credit of this work enjoys the reputation of having introduced into England the system of dating events from the era of Christ.

There can be no doubt that at the time when Beda composed his "Sexta Ætas" the practice of inserting the date of the Incarnation in charters and other public instruments was not usual in England. The earliest charters so dated, of which the genuineness is not disputed are those of Sigered King of Kent, and of Eardulf King of Kent, which are dated respectively indictione XV. anno Domini Incarnationis DCCLXII., and anno ab Incarnatione Christi DCCLXII., indictione XV. Both of these charters are cited by Sir Thomas Duffus Hardy in his Introduction to the Rotuli Chartarum. In speaking of these charters as the earliest English charters in which the date of the Incarnation is used, I am not unaware of the existence of a document which is dated "anno "recapitulationis Dionisi, id est ab incarnatione, sex-"centesimo octuagesimo indictione sexta revoluta." This document purports to have been issued by Oshere, King of the Hwiccii, who began to reign over the Hwiccians, a people occupying a territory co-extensive with the bishoprick of Worcester, in the year 680. But the authenticity of this document is open to suspicion, not merely by reason of the date being prefixed to it, but because the sixth indiction does not coincide with the year of our Lord 680. The reference to the recapitulation of Dionysius may demand a few words of explanation.

Dionysius, surnamed Exiguus, a Scythian monk and subsequently a Roman abbot, is believed to have first used the date "ab incarnatione Christi" about the year 527 after the birth of our Saviour, and hence the Christian era was at first termed Recapitulatio Dionysii. The system, accordingly, of dating documents from the Incarnation did not come into use in Italy until the middle of the

sixth century, and although it was introduced into France in the seventh century, it was not generally used there until the eighth century. It is possible therefore that King Oshere may have had at his court a French monk, who was conversant with the new system of dating documents in France, and who thought it necessary to explain his use of it, by inserting the words "Recapitu- "lationis Dionisi," as explanatory of his authority for the date of the Incarnation. There is further a remarkable feature of this document, which points to a foreign hand, and to which I have already alluded, namely, that it commences with the date, whereas it is usual in the Charters of Anglo Saxon Kings to add the date at the end of them.

However this may be, Beda's Treatise on the "Sixth "Age of the World," was the first work that rendered his countrymen familiar with the Christian era, and so prepared the way for its general adoption in England in the latter half of the eighth century. I have alluded to this fact as showing that Beda in dealing with the divisions of time had carefully studied his subject, and I may add that he was not a blind follower of Dionysius Exiguus, as Beda's computation of the date of the Incarnation commences two years before the vulgar era of the Scythian monk. When Beda, accordingly, in his treatise "De Temporum Ratione," discusses the division of the solar year into months and days and hours and moments, we have the testimony of a writer accurately versed in the mathematical learning of his day, and who explains the divisions of time, which were then in general use, in accordance with a system of solar and sidereal observation, the phenomena of which may have been correctly noted, although it was attempted to explain them upon a false hypothesis. Beda, acccordingly, having said in the earlier part of chapter ii. De Temporum Ratione, and I quote from the edition of his works published by Herwagius at Basle in 1563, "Recipit autem hora iiii.

" punctos, x. minuta, xv. partes, xl. momenta et in " quibusdam lunæ computis v. punctos," refers towards the conclusion of the same chapter to the mathematical subdivision of the zodiacal circle into 172,800 momenta. "Attamen mathematici in explorandis hominum geni- " turis ad atomum usque pervenire contendunt, dum " zodiacum circulum in xii. signa, signa singula in " partes xxx., partes item singulas in punctos xii., " punctos singulos in momenta xl., momenta singula " in ostenta lx. distribuunt, ut considerata diligentius " positione stellarum fatum ejus, qui noscitur, quasi " absque errore deprehendant." I quote this passage by reason of Beda's reference to the science of the astrologers, in which, however, he had no faith, and for the purpose of illustrating the astronomical use of the term "momentum" as designating the fortieth part of a "point" in the zodiacal circle.

But it may be asked what is a moment of time, and what is the meaning of the term "momentum" when employed to designate the fortieth part of an hour of the day? A complete answer to these questions is supplied by Beda himself, and still more fully by the Gloss of Bredefert of Ramsey. Bredefert says, "Si vis " scire quot atomos et momenta et punctos et horas " habeat (sic) in die vel in hebdomada, necnon et in " mense naturali, istam calculationem attende et in- " venies. Primitus ad horam incipiamus. DLXIIII " atomi faciunt unum momentum, quatuor momenta " faciunt unum minutum, duo minuta et dimidium " faciunt unum punctum solarem, quatuor puncti " faciunt unam horam solarem." Cap. iii. The same commentator goes on to say, "Momentum verò est quadra- " gesima pars unius horæ. Ita enim voluerunt as- " trologi minutissimum siderum motum per umbras " intelligere, ut quadragesimam partem unius horæ " sentirent, dum umbram per quadragesimam partem " in horologio ipsius spatii, quod unum horam signi-

" ficat, signifer transiret. Nec hoc suffecerat iis, sed
" et minora addidere spatia, quæ vocantur ostenta.
" Unum enim momentum ostentum semis compre-
" hendit. Maxima ergo spatia divisionum unius horæ
" puncta dicuntur, minora vero ostenta vel atomi.
" Sed ut prædiximus, punctorum duæ sunt mensuræ,
" una quidem quartam partem unius horæ, id est,
" decem momenta, altera vero quintam continet,
" habens in se octo momenta." Cap. xv.

It would appear from this statement of Bredefert of Ramsey that on the horologium, or hour-dial, forty spaces were marked as subdivisions of the hour, over which the shadow of the index (gnomon) travelled with the movement of a star, as the star was supposed, according to the Ptolemaic theory, to rotate round the earth. There were thus indicated on the dial forty appreciable movements of a star in the interval of time marked on the dial as an hour, or, if the sun was observed, forty appreciable movements of the sun.

Further, it would appear that the observers of the heavenly bodies in Beda's time were accustomed to use some instrument in the nature of a micrometer for the purpose of measuring the velocity of the movement of the sun in its supposed daily course of revolution round the earth, so that each space marked as a moment indicated an identical portion of the sun's daily course in the heavens which it had travelled over, in other words indicated that a certain portion of the artificial day of twenty-four hours had elapsed. Thus Beda in his "Computi Ratio" says: "Porro momenta a motu syde-
" rum celeberrimo nuncupantes, dum aliquid sibi bre-
" vissimis in spacies cedere aut succedere sentitur," or as it is more explicitly stated in the Gloss upon Chapter II. of "De Temporum Ratione." "In initio
" motionis momentum fit, initium enim motionis, quo
" movetur sidus aliquod, momentum dicitur, non tota
" motio sideris vel cujusque rei, sed hoc est, cum

" aliquid sibi id est, sideri cedere, scilicet a loco; id " transire atque succedere, scilicet in loco, *quod per* " *foramen probatur, quando stella aliquid perspi-* " *citur.*" This is a remarkable passage, as it is a forecast of Galileo's telescope, that is, of the tube without the lenses! I do not venture on the present occasion to offer more than a general explanation of the experiment. My object has been to show that the division of the hour into forty moments was a scientific division, grounded at the time when it originated upon a careful method of observing the heavenly bodies, to which nature then set limits, which optical science has long since enabled the observer to overleap.

It would thus appear that the division of the hour of the day into forty moments was well known in England in the time of Beda, and that a tradition of it was handed down amongst learned men, so that it should not excite in us any surprise that Bracton makes use of that division of the hour. I have spoken of the Ptolemaic system, as if it were generally received in England in Beda's time, but in speaking of the system of Ptolemy I do not mean the writings of Ptolemy, but simply his system, according to which the earth was regarded as the centre of the visible universe, and the sun was held to revolve round the earth in the course of a day and a night of twenty-four hours. It seems probable from the citation which I have made in my introduction to the fourth volume of a passage from the writings of Papias, an Italian grammarian of the XIth century, that the Italians were not at that time acquainted with the writings of Ptolemy, which were first brought to the notice of European astronomers through the translations made by the Moors of Spain. Sir George Biddell Airy, who has so long and so ably filled the office of the Astronomer Royal, has kindly informed me that there is no trace in Ptolemy's works of the division of the hour into forty moments. " Ptolemy's scale of time,"

he says, "is very remarkable. Beginning with the day "he divides it into sixty parts (of course each part "equal to twenty-four minutes of our time), and he "divides each part by sixty, and then divides by sixty, "and so on." It would seem, in fact, he elsewhere says, "that Ptolemy himself, and his followers, whenever "they attempted anything accurate, resorted to sexa-"gesimals." The strange fact still remains unaccounted for that no English Glossary or Encyclopædia makes mention of the ancient division of the hour of the day into forty moments, notwithstanding it must have been a scientific division of the hour in England during more than five centuries.

There is a special essoin mentioned by Bracton which deserves a passing notice, as it is not recognised in the Ancienne Coutume de Normandie, and it seems to have been peculiar to the English courts, namely, an essoin for vill-sickness. Glanville has noticed it in l. I, cap. xxviii. This notice of it leads us to infer that the king generally held his courts of justice in some vill, unlike the feudal lord, who was accustomed to summon his vassals round his tent or his castle. Bracton speaks of this essoin as anomalous, inasmuch as it does not follow the rules of other essoins, and defines it otherwise than Glanville. The latter treats of it as an essoin in the case where a person has arrived in a vill to prosecute his suit, and is unable from illness to appear in court. On the other hand, Bracton applies it to the case of a party, who has appeared the first day in court and is unable from some supervenient infirmity to appear the next day in court, and who, if he be detained by his infirmity more than four days, may appoint an attorney "ad lucrandum vel perdendum." This was a step in advance of the principle that an essoinee for bed-sickness could not appoint an attorney, and it tended to facilitate the administration of justice. Fleta (l. VI. c. xiii) is content to copy the language of Bracton on this

subject, with the further observation that the essoin of vill-sickness was not admitted in the county court. Britton, on the other hand (l. VI., c. vii., § 4), promises to discuss the essoin of vill-sickness in a future chapter, which has either been lost or was never completed.

Bracton concludes his chapter on essoins with a reference of some historical interest as illustrating the judicial career of Martin de Pateshull. I have appended a note p. 610 of the first volume of the present work calling attention to a correction supplied by M.S. Rawl, C. 160, of an error in Tottell's text, which has perplexed many commentators. Tottell's editor, in speaking of the first pleas after the war in the County of Essex has misinterpreted the contraction of the word "comitatu," and has rendered it "communem," so that the passage in in Tottell's edition reads, "post guerram communem "Essex," instead of "post guerram comitatu Essex." I have observed in that note that the case there cited by Bracton is the earliest case cited by him. I ought to have said ex majori cautela the earliest case cited by Bracton, in which he gives the name of the party to the suit, so as to allow of our identifying the case. Bracton, in fact, alludes to a still earlier case in his concluding chapter of essoins, fol. 364, as confirmatory of the position that the record of the four knights sent by the court to take a view of a party essoined *de malo lecti*, could not be impeached. In support of this position Bracton says, "You have a case in the iter of Martin "de Pateshull, in the county of Leicester, in the time "of King John." Unfortunately Bracton does not name the year, nor the party concerned in the suit. All that we can learn from the passage is that Martin de Pateshull was one of the judges itererant in the reign of King John. I have already, in the introduction to vol. II., commented on this fact, as having escaped the notice of Mr. Foss, who in his "Lives of "the Judges" speaks of Martin de Pateshull as having

been raised to the Bench very soon after the accession of H. III.

The last treatise of the present volume, which is entitled in Tottell's edition the third treatise of the fifth book, is in several manuscripts not noticed as a separate treatise, but is continued as an integral part of the treatise which precedes it, having simply the heading De Contumacibus, &c. prefixed to it. Glanville has treated the question of the absence of the party summoned very briefly (l. I. c. vii.) and according to the order of the feudal law, whereas Bracton discusses the doctrine of contumacy at considerable length, distinguishing between defaults in real actions and defaults in mixed actions, meaning by the epithet "mixed" such actions as are directed *in rem* as well as *in personam*, and in which defaults are to be adjudged according to the same rules that apply to real actions. At the conclusion of the fourth chapter, where the special treatment of defaults terminates, Bracton makes a curious allusion to proceedings under a writ of *Quo warranto*, which writ at a later period of our legal history was converted into an instrument of great oppression on the part of the Crown against certain corporate bodies. There seems to have been a difference of opinion amongst the highest legal authorities in Bracton's time, whether if a person was summoned to shew by what warrant he held a certain tenement, which the king claimed either as an escheat or as of his ancient demesne, the tenement forthwith, upon the default of the tenant to appear, should be taken into the hands of the king or not. Bracton, contrary to the opinion of some others, held that the rule applicable to a real action should prevail in pursuance of the additional words in the writ "and which land the king claims as his escheat." Otherwise, however, he observes, if a writ of "quo warranto" without any such additional words is sued out against a tenant of land, inasmuch as the inability of the tenant

to prove his right to hold the land would not of itself establish any right on the part of the claimant to take it, an attachment only of the tenant should take place, if he failed to appear, and not a caption of his land. He then goes on to observe, that although the claimant by a proceeding under a "quo warranto" would not acquire for himself the land of the party, whose title he sought to impeach, and it was against the civil law that a possessor should be compelled by a writ of "quo warranto" or of "quo jure" to disclose his title, nevertheless the proceeding by a writ of "quo warranto" was effective for a claimant, in order that he might ascertain generally by what title the tenant claimed to hold his land, whether as heir or as possessor, and thereby he might know by what action he ought to proceed, if he sought to recover it. It would thus appear that the king's justiciaries were at this time introducing a new principle into proceedings for the recovery of real estate by allowing the claimant to sue out a writ of discovery, so far as to enable him to ascertain the general nature of the tenant's title. Certain of the high legal authorities were opposed to the prerogative right of the king, so to say, to a writ which would comprise two actions under one proceeding, and under which, if the tenant failed to appear, his land would be forthwith taken into the hands of the king. What seems however to have given colour to this high handed proceeding, and to have recommended it to the support of the king's justiciaries was that it was an effective weapon for the Crown to use against the Norman adventurers, whom King John had introduced into England, and against whose aggressions Hubert de Burgh, as chief justiciary, had to struggle for a long time in vain, although he was ultimately successful in compelling Fulk de Breaute, their leader, to leave the kingdom in 1224. But notwithstanding the bulk of the alien barons had withdrawn into Normandy before 1244, they continued up to that year to draw

large revenues from their possessions in England, so that the king at last with the double motive of making himself popular with the English barons and of increasing the revenues of the Crown, so as to be independent of the supplies which the Parliament of 1244 had refused to grant, caused all the lands of the Normans to be seized and confiscated. Thenceforth it would seem to have been the normal duty of the king's justices itinerant to hold an inquest in every county respecting "the lands of the Normans," with a view to ascertain by what warrant they were held, and, if they were held without a warrant from the Crown, to seize them into the hands of the king. Bracton supplies an illustration of this practice on the part of the king's justiciaries in the articles of enquiry, which he has set out at length in his treatise de Corona, fol. 116. This liability of all lands derived from the Normans to be confiscated to the Crown seems to have been maintained even in Britton's time, as in his chapter on the king's rights (l. I. ch. xix) directions are given for an inquest to be made "concerning the lands of the "Normans, and of felons who hold of us in chief, which "have been aliened after the commission of the felony," and even Fleta, in his chapter "De Brevibus Visuum," (l. VI. c. xxii, § 1.) speaks of the proceeding of Quo warranto under which the king was entitled to a view of the land, which he claimed in his court "ut eschætam "suam de terris Normannorum." Of course after Henry III. had ceded his rights over the Duchy of Normandy to King Louis of France in 1239, the Normans would have ceased to owe any allegiance to Henry III. or to his successor; but it may well have been the case that the Crown claimed to seize at any time lands, which had been derived from Normans who had been in possession of them after 1244. Matthew Paris, in his Historia Anglorum, Rolls edition, vol. II. p. 480, gives the fullest account of the king's decree of confiscation.

After stating that Ralph de Neville, the king's chancellor had died on the calends of February, he goes on to say:

"Circa eadem tempora dominus rex, considerans quod Normanni bona regni irrevocabiliter ingrati ex terris et redditibus opulentis, quos habebant in Anglia, annuis asportabant, omnes fecit in manu sua seisiri; rege tamen Francorum occasionem suscitante."

It deserves remark that at this time Henry III. governed his kingdom without either a justiciar, or a chancellor, or a treasurer, but he seems to have had a body of able councillors, who were of English origin, and one of whom, John de Lexington, figures at a subsequent time frequently amongst the justiciaries itinerant. His name is mentioned by Bracton on an occasion of a judgment given by him at Clarendon, which Bracton did not consider to be sound law. "Casus iste evenit "apud Clarindone in præsentia Johannis de Lexinton, "et male ibi fuit terminatum, objecta quadam excep-"tione servitutis contra primo feoffatum," f. 45. At the time when Bracton criticised this judgment he must already have had some experience of the duties of the office of justice itinerant.

The subject matter of the next chapter (V.) is somewhat inconsistent with the general title which Tottell's editor has prefixed to the treatise, namely "De Defaltis," inasmuch as it treats of the appearance of the plaintiff and of the declaration to be made by him on the appearance of both parties in court. The science of pleading had made considerable progress since Glanville's time, and Bracton's contemporaries had borrowed from the civil law the term "intentio," which they employed to signify the statement on the part of the plaintiff, or what is now styled in English procedure the declaration. Whether such was the precise meaning of the term "intentio" as a term of the Roman law of procedure may be open to some doubt, as we have but a limited insight into the improved procedure of the

Roman courts through the discovery of the Institutes of Gaius during the present century. But the Bractonian purport of the word "intentio" corresponds to that for which the Norman French word "counte" is used by Britton (l. I, ch. xxxii. § 15), and for which the legal term "count" is still in use in the English courts.

The special pleader had not as yet found a vocation open to him in the English courts, nor does Bracton speak of the "narratores" or "counters" as an order of legal practitioners, but they were well known in his time on the continent of Europe. In England, on the other hand, the duty of narrating or of counting seems to have devolved upon the order of serjeants-at-law in the next following reign of Edward I., for the author of the Mirroir des Justices dedicates a chapter to countors. "Countors sont serjeants sachant la Ley del Roialme, "qui servent al commission des people à pronouncier "et defendre les actions en jugement pur ceux qui "mestier ent ont pur loier," ch. ii., sect. 5. I pass over the technical rules, which Bracton lays down respecting the articles of the declaration. He observes that a writ of right could not set up a title beyond the time of King Henry, the grandfather of the lord the king, because no witness could speak either from his own memory or from that of his father beyond that time. Hence, he says, if a claimant should speak of the time of King Henry the elder (Henry I.), he might lose his cause from failure of proof. And here Bracton speaks of a curious practice under which, upon payment of a fee, the tenant might have mention made of the time, where the claimant, having made an error in the time, had placed himself on a great assise. "Et "unde cum quis post talem errorem inde se posuerit "in magnam assisam, dat aliquando tenens de suo pro "habenda mentione de tempore," f. 373. Mr. Reeves seems to consider this favour to the tenant to have been

a relic of the ancient practice of selling justice, which the kings of England had renounced in those memorable words of the great charter of liberties, "Nulli vende- "mus, nulli negabimus aut differemus rectum aut "justitiam." Art. 40. He considers, however, that the great charter did not contemplate the abolition of all fees, as a moderate recompense to the officers of the court for their labour and attendance. He further goes on to say that there is an obscurity in this passage, that renders it difficult to make out any meaning at all, inasmuch as Bracton, having used the word "mentio" to express the naming of the time of the seysine in the claimant's writ, uses it afterwards to signify the moving of the question of seysine by the tenant. It is unfortunate that Britton's later work breaks off abruptly after discussing essoins, so that it throws no light upon the passage in Bracton, whilst Fleta also omits all allusion to the subject.

There is an old adage of the law courts, "optimus "interpres usus," and we can fortunately appeal to the practice of the king's court to clear up the difficulty. Whatever may be the correct interpretation of Bracton's language, there was primâ facie nothing corrupt in the court allowing the tenant to make a statement on his part as to the time of his seisine, where it was calculated to disprove the case of the claimant either as negativing a fact alleged by the claimant, or as showing that the ancestor from whom he claimed was not *in rerum natura* in the reign of such a king. Besides, the tenant was entitled in equity to put the claimant in his turn upon the proof of his title, inasmuch as the issue to be decided by a great assise was which of the parties had the greater right. We have here the first germ of the practice, known in later times as *the tender of the demi-mark*, of which there is an apposite illustration in the proceedings on a writ of right set out by Sir William Blackstone in the Appendix to the third

volume of his Commentaries. From these proceedings (tempore Georgii I. et II.) we learn that it was competent for the tenant in possession, when a claimant had put himself upon a great assise, to put the claimant on the proof of his alleged title by tendering in court the sum of six shillings and eightpence to the use of the lord the king. This was entitled "the tender of the "demi-mark," the mark being thirteen shillings and fourpence, two thirds of a pound sterling. This tender of a demi-mark on the part of the tenant was accompanied by the prayer, that an inquiry should be made into the title alleged by the claimant. We are disposed to regard the requirement of the court, that the tenant on such occasions should pay a moderate fee to the king's use, in the nature of a test of the good faith of the tenant in challenging the claimant's title.

The seventh chapter takes up the question of exceptions, the classification of which into peremptory and dilatory is evidently borrowed from the civil law. Having simply touched upon them in a short chapter, Bracton defers the further treatment of this subject, preferring, as he says in the eighth chapter, to collect them all as it were into one bundle (in unum fasciculum colligere), and to discuss them all together in order. The rest of the treatise is devoted to "the making of a view," in order that a thing certain may be brought into judgment. The object of the view was to inform the tenant precisely of the quantity of land, of which the freehold was claimed by the plaintiff, in cases where it could not be otherwise ascertained by description or by specification, or else of the quantity of land, out of which a rent or common of pasture was claimed, or in respect of which suit of court was demanded. It would appear from the cases cited in illustration of the law in such matters that Bracton had access to the Plea Rolls from the commencement of the reign of Henry III., although it seems doubtful whether the names of the justiciaries were

entered on the rolls in the two first years of that king's reign. Bracton, for instance, cites in the present treatise five cases of pleas in the second year after the war, in none of which is the name of a justiciary mentioned, neither is any such name mentioned when he cites a case amongst the first pleas after the war, f. 376, b. The same remark will apply to the various cases in other parts of his work, which Bracton cites either as the first pleas after the war, or as the pleas in the second year after the war, or as the pleas in the second year of King Henry after the war, the war in question being that which King John transmitted as a legacy to his successor. This war saw Lewis, son of Philip, king of France, to whom the barons of England had offered the crown, master of the city of London, where he received the homage and fealty of the English barons. It was this war which all but imperilled the succession of Henry III., who was crowned at Gloucester, and whose main support was the loyalty of the barons of the western shires. The coronation of Henry III. took place on Oct. 28, 1216, but the normal administration of justice was suspended by the operations of the war until the conclusion of the treaty of Lambeth on Sept. 11, 1217, after which the child-king re-issued the great charter in its final form. From this time the annual circuits of the king's justiciaries were resumed, and it is from this period that the cases in question are dated. But Bracton has made an exception on two occasions in favour of Martin de Pateshull. On the first occasion Martin de Pateshull seems to have been president of a commission to dispose of a variety of cases waiting for judgment immediately after the war. On the other occasion Martin de Pateshull gave judgment in Banco in the second year after the war. Whether Martin de Pateshull had been more careful than the other justiciaries of his time to have his judgments enrolled, we have no means of ascertaining, but it is by no means

improbable that Bracton himself was present on both occasions and took a note of the judgments. From the familiar manner in which Bracton speaks of Martin de Pateshull, sometimes citing him as dominus Martinus and sometimes simply as Martinus, it has been thought that Bracton was on terms of personal intimacy with that eminent judge, who was certainly one of the most distinguished ornaments of the bench at Westminster in an age of distinguished judges.

The Temple, 1882. T. T.

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# HENRICI DE BRACTON

DE

# LEGIBUS ET CONSUETUDINIBUS ANGLIÆ.

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# HENRICUS DE BRACTON

ON THE

# LAWS AND CUSTOMS OF ENGLAND.

Q 6366. Wt. 2377. A

# HENRICI DE BRACTON

DE

# LEGIBUS ET CONSUETUDINIBUS ANGLIÆ,

## TRACTATUS SECUNDUS LIBRI QUARTI:

### IN QUO TRACTATUR DE INGRESSU.[1]

### Cap. I.

1. Ubi locum habet ista actio.

Dictum est supra de causa possessionis, quæ per assisas et recognitiones terminatur: nunc autem dicendū de causa ꝓprietatis, quæ terminatur per juratā ex testimonio et probatione eorum, qui probare possunt de visu suo proprio & auditu, s. ubi quis seysinam suā ꝓpriam petierit, vel alicujus antecessoris sui, quam de voluntate sua de aliqua re ad terminum annorum
f. 318. vel ad terminū vitæ aliis dimisit, & q̃ post terminum ꝑteritum ad ipsum reverti debeat, & ubi locum non habeat assisa novæ disseysinæ, quia contra voluntatē suam & injustè non est disseysitus, nec etiam assisa mortis antecessoris, quia antecessor suus non obiit seysitus ut de feodo in dominico suo, quia alius inde habuit liberū tenementū qui rem illam tenuit ad vitam, q̃ quidem aliter esset si ad terminū annorū, quamvis centum, q̃ vitam hominum excederet. Et non solū locum habet ista actio versus eum qui rem ita receperit ad terminum, verum etiam contra omnes qui talem habent ingressum, quatenus gradus et tempus ꝓmiserint. Non

[1] Hic incipit Tractatus Septimus libri Quarti de Ingressu. MS. Rawl. C. 160.

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# THE FOURTH BOOK

OF

# HENRICUS DE BRACTON

ON THE

# LAWS AND CUSTOMS OF ENGLAND.

## THE SEVENTH TREATISE,

WHICH TREATS OF ENTRY.

### Chapter I.

We have treated above of a cause of possession, which is determined by assises and recognitions; now indeed we must treat of a cause of property, which is determined by a jury upon the testimony and proof of those, who can prove by their own sight and hearing, for instance, where a person has claimed his own seysine, or the seysine of some ancestor of his, which he has of his own will demised to others for a term of years, or for the term of their life, and where an assise of novel disseysine would not have place, because there is no disseysine against his will and unjustly, nor indeed an assise of mort-dancester, because his ancestor has not died seysed of it as of fee in his own demesne, because another person had the freehold thereof who had the estate for life, which would be otherwise if he had it for a term of years, as for instance for one hundred years, which would exceed the life of men. And not only this action has place against him who has so received the estate for a term of years, but against all who have such an entry, as far as degree and time shall

1. Where this action has place.

f. 318.

enim excedit tertiam gradum, nec tempus q excedit testimoniū, de visu et auditu. Item non solū locum habet versus eos qui per tales habent ingressum, sed locum habet versus alios, qui ingrediuntur per tales, et qui rem transferre non possunt sine consensu aliorum, licet aliquod jus habet[1] transferendi: ut canonicus sine assensu episcopi et capituli. Item si uxor sine consensu viri, et e converso si vir sine consensu uxoris, si abbas sine consensu capituli. Item si celerarius clericus,[2] vel alius ꝑcurator sine cōsensu abbatis vel prioris, vel aliorum quorum cōsensus requiri debet in translatione facienda. Item locū habet hæc actio versus omnes qui ingressum habent per tales qui transferunt, et qui liberum tenementum non habent nec jus transferendi, nisi q sunt in nuda possessione et nomine aliorum, et transferunt contra voluntatē dominorum, ut custos, vel ballivus, dum aliquis infra ætatem, vel absens, vel in prisona, vel non sanæ memoriæ, vel alio modo, secundū q inferius plenius dicetur. Et notandū quòd hæc dictio (terminus) largè se habet, et ad terminum vitæ, & ad terminum annorum qui p̃teriit. Et sciendum q ille qui ad terminum annorū dimittit, quamvis longissimum, dum tamen ꝑbari possit ingressus ex testimonio visus & auditus, retinet sibi dominium, ꝑprietatem, feodū, et liberum tenemētum si hæc omnia priùs habuerit, vel q̃dam eorū, secundum q prius habuerit. Nihil enim transfert ad firmarium ad firmam nisi q uti possit & frui, s. habere usum & ꝑcipere fructum. Et unde bene poterit ꝑprietarius hæc omnia ad aliū transferre, q̃ sibi retinuit, sine injuria firmarii, q si non fecerit, hæc omnia transfert ad hæ-

Britton, v. ch. xiv. § 7.
Fleta, 361.

[1] "habeant," MS. Rawl. C. 160. | [2] "clericus," omitted, id.

permit. For it does not exceed the third degree, nor a time, which goes beyond testimony from sight and hearing. Likewise it has place not only against those who through such persons have entry, but it has place against those who enter through such persons, and who cannot transfer the estate without the consent of others, although they have some right of transferring it, as a canon without the assent of the bishop and the chapter. Likewise if a wife without the consent of her husband, and conversely if a husband without the consent of his wife, if an abbot without the consent of his chapter. Likewise if a steward clerk or other agent without the consent of the abbot or prior, or of others whose consent ought to be sought for in making a transfer. Likewise this action has place against all who have entry through such as transfer, and who have not a freehold nor a right to transfer, except that they are in the bare possession and in the name of others, and they transfer against the will of the lords, such as a steward or a bailiff, whilst some one is under age, or absent, or in prison, or of not sound memory, or in some other manner which will be explained more fully further on. And it is to be noted that this word "term" has a wide meaning, and applies to the term of life, or to a term of years which has passed. And it is to be known that he who demises for a term of years, although of very great length, provided only that entry can be proved by the testimony of sight and hearing, retains for himself the dominion, the property, the fee, and the freehold, if he had all these previously, or a certain portion of them according to what he had previously. For he transfers nothing to the farmer to farm but what he can use and enjoy, that is to have the use and to reap fruits thereof. And hence a proprietor may well transfer all these things to another, which he has retained for himself, without injustice to the farmer, because if he has not done so, he transfers all these things to his heirs.

redes suos. Item notandum q istæ dictiones (ad terminū qui p̃teriit) generales sunt, et terminare possunt plures casus speciales, et in narratione facti suppleri poterit q min$^{9}$ dictū est in brevi, & cùm generale sit, priùs dicatur de eo. Forma brevis talis est.

2. Breve, si quis dimiserit ad terminum qui præteriit.

Rex vicecomiti salutē. Præcipe A. q justè & sine dilatione reddat B. tantū terræ cum p̃tinentiis in tali villa, q idem B. ei dimisit ad terminū qui p̃teriit (ut dicit), et nisi fecerit et B. fecerit te securū de clamore suo p̃sequendo, tunc summoneas p̃ bonos summonitores p̃fatum A. q sit corā justiciariis nostris &c. ad primā assisā cùm in p̃tes illas venerint, ostēsurus quare non fecerit. Et habeas ibi summonitores et hoc breve. Teste &c.

3. De modo procedendi in hujusmodi placito. f. 318 b. Britton, v. ch. xv. § 1. Fleta, 364.

Qualiter autem tenens summoniri debeat, et si non venerit ad summonitionem, qualiter defalta puniri debeat, infra dicit̃ pleniùs in actionibus realibus. Poterit autem se essoniare si voluerit de malo veniendi, & non de malo lecti, quia nunquā locum habebit essoniū de malo lecti, nisi breve de ingressu per narrationē vertatur in breve de recto, p̃pter lōgissimū ingressum, qui p̃bari non poterit per visum p̃prium alicujus & auditū sed alienum, & ubi agi oportet de necessitate de mero jure p̃ magnam assisam vel per duellum. Et cùm breve de ingressu incipiat esse alterius naturæ quā primò fuit, s. breve de recto, merito debet habere omnia quæ breve habet, cujus naturam sequitur in narratione, & vice versa, si contingat q per narrationem vertatur breve de recto in breve de ingressu, desinit habere naturam brevis de recto, & sic amittet essonium

Likewise it is to be noted that these expressions (for a term which has passed) are general, and may determine many special cases, and in the statement of the facts there may be supplied that which has been understated in the writ, and since this is general, let us first treat of it. The form of the writ is of this kind.

2. A writ, if a person has demised for a term, which has passed.

The king to the viscount greeting. Enjoin A. that justly and without delay he restore to B. so much land with its appurtenances in such a vill, which the said B. has demised to him for a term which has passed, as he says, and unless he has done so, and if B. has given you security to prosecute his claim, then summon by good summoners the aforesaid A. that he present himself before our justiciaries, &c., at the first assise, when they shall come into those parts, in order to show cause wherefore he has not done so. And have there the summoners and this writ. Witness, &c.

3. Of the mode of proceeding in a plea of this kind.

f. 318 b.

But in what manner a tenant ought to be summoned, and, if he has not appeared to his summons, how his default ought to be punished, is expounded more fully in real actions. For he may essoin himself on account of sickness on his journey, and not on account of sickness in bed, for an essoin on account of sickness in bed will never have a place, unless a writ of entry has been converted by the declaration into a writ of right on account of a very remote entry, which cannot be proved by the proper sight or hearing of any one, but only by one from hearsay, and where the action of necessity must be about the absolute right by a great assise or by battle. And when the writ of entry begins to be of a different nature than it was at first, to wit, a writ of right, it ought to have deservedly every thing which a writ has, whose nature it follows in the declaration, and conversely, if it happens that through the declaration a writ of right is turned into a writ of entry, it ceases to have the nature of a writ of right, and so it will lose an essoin of

Britton, *ib.* § 2. de malo lecti ratione præmissa. Sed si cùm breve de recto per narrationē incipiat esse breve de ingressu, & petens narrationem suam ꝑposuerit & fundaverit, & paratus sit ꝓbare eam ꝑ patriam, tamen in voluntate tenentis est utrum ponere se voluerit in juratā de ingressu tali vel non, cùm tria habeat remedia, s. defendendi se ꝑ duellum, vel ponendi se in magnam assisam de jure, vel in juratā de ingressu. Sed cùm in voluntate tenentis sit eligendi quā istarum viarum[1] voluerit, nō priùs fiet breve de recto breve de ingressu, quā tenens elegerit defendere se ꝑ juratā cōtra ingressum: ut si abbas, prior, vel alius petierit versus aliquē ꝑ breve de recto aliquam terrā ut jus ecclesiæ suæ, vel alius ut jus suū ꝑ verba de recto & ut de jure mero, & adjiciat in fine clausulam istam: Et in quam non habet ingressum nisi ꝑ talem prædecessorem vel antecessorem suum, qui terrā illam ei dimisit ad certū terminum &c.; vel si aliquis dicat: Et in quam non habet ingressum nisi ꝑ talem quæ fuit uxor talis, quæ terram illā tenuit in dotem de dono talis, cujus hæres ipse petens est, & quamvis tempus brevis de ingressu hoc permiserit, non tamen ꝓpter hoc vertitur breve de recto ad breve de ingressu, sed in suo statu durabit ꝑ omnia, nisi tenens gratis se posuerit in juratā de ingressu. Vertitur quandoq; e converso ꝑ narrationē breve de ingressu ad breve de recto, de necessitate & non de voluntate: quandoq; ꝓpter longissimum ingressum, quandoq; ꝓpter donū & feoffamētum. Propter longissimum ingressum, qui ꝓbari non possit de alicujus visu ꝓprio vel auditu, sed alieno, sicut de visu patris & auditu qui injūxit filio: quo casu ꝓpter necessitatē, &

[1] "juratarum," MS. Rawl. C. 160.

sickness in bed for the reason premised. But when a writ of right through the declaration begins to be a writ of entry, and the claimant has propounded and founded his declaration, and is prepared to prove it by the country, nevertheless it is at the option of the tenant whether he wishes to put himself upon a jury concerning such entry or not, since he has three remedies, to wit, of defending himself by battle, or of putting himself upon a great assise concerning the right, or upon a jury concerning the entry. But since it is at the option of a tenant to elect which of these ways he wishes, a writ of right shall not become a writ of entry before that the tenant has elected to defend himself by a jury against the entry: as if an abbot, prior, or another has claimed against any one by a writ of right any land as the right of his church, or another person as his own right by words concerning the right and as of absolute right, and should add at the end this clause: and into "which he has no entry, except through such a prede-"cessor of his ancestor who demised that land to him "for a certain term &c." or if some one should say "and "into which he has no entry except by such a person, "who was the wife of so-and-so, who held that land "as dower by the grant of so-and-so, whose heir the "claimant is," and although the time of the writ of entry has permitted this, the writ of right is not on that account turned into a writ of entry, but it will continue in its own state through everything, unless the tenant has put himself gratuitously on a jury concerning the entry. Conversely a writ of entry is sometimes turned into a writ of right by the declaration, of necessity and not of option, sometimes on account of a very remote entry, sometimes on account of a grant and a feoffment. On account of a very remote entry, which cannot be proved by any one's own sight or hearing but only by that of another, as by the sight and hearing of his father who enjoined his son: in which case on account

alterius ꝑbationis defectū, oportet q̄ tenens se ponat in magnam assisam, vel defendat ꝑ duellū. Ut si ingressus longinquus sit de tempore H. regis avi vel infra usq̄ ad tēpus assisæ mortis antecessoris, ut si dicatur: Et unde A. non habet ingressū nisi ꝑ B. qui non nisi custodiam inde habuit cum C., cujus hæreditas terra illa fuit, & quæ fuit jus ꝑdictæ C. matris B. uxoris ejus qui petit, & ꝑ quā ꝑdictus talis & uxor ejus qui petunt clamant terrā illā, & postea sic: Et unde ꝑdicta talis avia fuit seysita in dominico suo ut de feodo & jure tēpore talis regis capiendo inde expletia &c. et de tali descendit jus &c. sicut ꝑ breve de recto. Et quo casu oportet q̄ tenens se ponat in magnam assisam vel defendat se ꝑ duellum in defectu alterius ꝑbationis, nisi sit qui dicat q̄ breve cadere debeat ꝑpter tēpus et longissimum ingressum. Si autē in[1] tempus permiserit, tenens habebit electionem ponendi se in juratam de ingressu, quousquè se posuerit
f. 319. in magnam assisam vel se defenderit ꝑ duellum. Ponere autem se poterit in juratam per hæc verba. Defendere enim poterit talem ingressum, & q̄ nullum habet ingressum per talem, quia antequàm talis aliquid inde haberet, fuit ipse tenens seysitus ꝑ alium talem, & ita q̄ per prædictam aviam nullum ingressum habuit, sicut ipse petens dicit, & ꝑvenire poterit ad inquisitionem si tempus permiserit de ingressu, ꝑ hæc verba, scilicet si p̃dictus talis tenens aliud jus, vel alium ingressum habuit in prædictam terram, quàm ꝑ ipsum talem, &c. qui terram illam dimisit B. uxori de hereditate A. &c. vel qui terrā illam ei dimisit de hæreditate talis uxoris suæ, vel alio quocunq̄ modo, &c. Item

[1] "in" omitted MS. Rawl. C. 160.

of the necessity and the failure of any other proof it is incumbent that the tenant put himself upon a great assise, or defend himself by battle. As if the remote entry be of the time of Henry the grandfather of the king, or within that time up to the time of an assise of mort-dancester, as if it be said: and whereof A. has no entry except through B. who had only the custody of it with C. whose inheritance that land was, and which was the right of the aforesaid C. the mother of B. the wife of him who claims, and through whom so-and-so aforesaid and his wife the petitioners claim that land, and afterwards thus: and whereof so-and-so aforesaid the grandmother was seysed in her demesne as of fee and of right in the time of the said king in taking thereof profits &c., from so-and-so the right descends &c. just as through a writ of right, and in which case it is incumbent that the tenant should put himself upon a great assise or defend himself by battle in default of any other proof, unless there be some one who says that the writ ought to fall on account of time and a most remote entry. But if time shall allow, the tenant will have an election of putting himself upon a jury concerning entry, until he shall have put himself upon a great assise or shall defend himself by battle. But he will be able to put f. 319. himself upon a jury by these words. For he may defend such entry, and that he had not entry through such person, because before such person had anything thereof, he the tenant was seysed by another so-and-so, and so that he had no entry through his grandmother aforesaid, as he the claimant says, and he will be able to attain to an inquest, if time shall allow, concerning entry, through these words, to wit, if so-and-so aforesaid the tenant had another right or another entry into the aforesaid land, than through the said so-and-so &c. who demised the land to B. his wife of the inheritance of A. &c. or who demised that land to him of the inheritance of his said wife or in some other manner &c. Likewise that a writ

q breve de ingressu vertitur ad breve de recto, ubi contra ingressum de termino opponitur feoffamentum sicut ꝑpter tempus longissimum, videri poterit in itinere W. de Ralegh in comitat̃ North. de Pet̃ de Galdington,[1] q̃ petiit terrā versus W. de Breton ꝑ breve de ingressu, & ubi W. defendit talem ingressum, & dixit q habuit ingressum per antecessorem illum de cujus seysina idem Petrus petiit terram illam, qui de terra illa feoffavit eum tenēdum ꝑ homagio & servitio suo, & q talc fuit jus suum per feoffamentum, & non ꝑ talem ingressum, posuit se in magnam assisam, & ꝑcessit assisa, quia clamavit tenere per feoffam̃tū per hec verba, scilicet, utrum ipse majus jus habeat in terra illa, ut in illa quam talis antecessor predicti Petri ei dedit ꝑ homagio & servitio suo, an idem Petrus tenendi eam in dominico. Ad idem facit de termino P. añ regis H. decimo quarto in com̃ Wiltoñ de Radulph. de Moigne, quia tenens locutus fuit de feoffam̃to antecessorum petentis de tempore L. annorum, ubi excedit tempus assisa[2] mortis antecessoris, statim desinit esse breve de ingressu, propter longissimum temporis ingressum nisi ex necessitate, ut infra. Item de hac materia inveniri poterit in rotulo de termino Sanctæ T. anno regis Henrici quarto in com̃ Eborum de Petrò de Malo Lacu & Isabella uxore ejus petentibus, & de priore de S. Oswaldo tenente. Si autem tenens omninò non venerit nec ꝑ se, nec ꝑ attornatum suum, tunc capiatur terra in manum dom̃ regis ꝑ magnum cape, q tale est, ut infra de actionibus realibus, et ibi breve. Et si ulterius aliam fecerit defaltam, tunc ꝑcedatur cōtra ipsum postquam comparuerit ꝑ parvum cape, & tunc fiat ut ibi. In fine autē cûm tenens comparuerit, vel

[1] "Goldyngtone," MS. Rawl. C. 160.

[2] "assisæ.," MS. id.

of entry is turned into a writ of right, where against an entry for a term a feoffment is opposed as on account of a very long time, may be seen in an Iter of William de Ralegh in the county of Northampton, concerning Peter of Galdington, who claimed land against William de Breton by a writ of entry, and where W. denied such entry, and said that he had entry through that ancestor, concerning whose seysine the said Peter claimed that land, who enfeoffed him with that land to be held for his homage and service, and that his said right was by feoffment and not by the said entry, and he put himself upon a great assise, and the assise proceeded, because he claimed to hold through a feoffment, in these words, to wit, whether he had the greater right in that land, as the land which the said ancestor of the aforesaid Peter granted to him for his homage and service, or the said Peter to hold it in domain. To the same effect is the case of Radulph de Moigne in the Easter term in the fourteenth year of king Henry in the county of Wilts, because the tenant spoke of a feoffment of the ancestors of the claimant of fifty years standing, where it exceeds the time of an assise of mort-dancester, it ceases forthwith to be a writ of entry, on account of the entry being of a very long time, unless from necessity as below. Likewise on this subject a case may be found in the roll of the term of Holy Trinity in the fourth year of king Henry in the county of York, concerning Peter de Malo Lacu and Isabella his wife the claimants, and the prior of St. Oswald the tenant. But if the tenant has not appeared at all neither in person nor by his attorney, then let the land be taken into the hand of the lord the king by the great *Cape*, which is such as is described below concerning real actions, and the writ there. And if he has further made another default, then let proceedings be taken against him after he has appeared by the little *Cape*, and then let it be done as there. In the end however, when the tenant has appeared, he will be able to

excipere poterit contra bŕe, vel contra ꝑsonam petentis, vel alio modo multis de causis & multis rationibus, ut infra de exceptionibus pleniùs, cùm petens intentionem suam ꝑposuerit, fundaverit, & ꝑbaverit, secundū quosdam. Non enim sufficiat[1] dicere ꝙ tenens talem habuit ingressum sicut ipse dicit, nisi docere possit ꝙ ad ipsum pertineat actio, & ꝙ ad ipsum debeat res reverti post terminū, ratione seysinę antecessoris sui, de cujus seysina fecerit mētionē non tamen narrare debet sicut ꝑ bŕe de recto, nisi ita sit ꝙ bŕe de ingressu versū sit in bŕe de recto. Sufficit enim si dicat, peto tanť terrā ut jus meū possessoriū si ad vitam tenuerit, vel ut hereditatē si teneat in feodo, & in quam talis non habet ingressū nisi ꝑ talem, &c., quia sufficit ista narratio tātùm ad seysinā in judicio possessorio: ut si ille
f. 319 b. dederit ad terminū, vel in feodo, qui non tenuerit nisi ad vitā quacunq; ratione. Si autē mentionē fecerit de usu & expletiis, & in dñico suo ut de feodo, respōderi possit sicut ad breve de recto, & posset tenens se defendere per duellū vel magnam assisam ꝙ in hoc breve locū non habet. Potest etiam tenens defendere jus petentis & talem ingressum ꝑ talē, & dicere quôd non habet ingressum ꝑ talē de quo breve loquitur, immo per aliū talē, & inde se ponat in inquisitionē, & fiat tale breve de inquirendo veritatē, nisi tenens ita esse cognoverit sine inquisitione. Forma brevis talis erit, si fieri debeat inquisitio in comitatu.

4. Si respondeat tenens, quod non

Rex vic. salutē. Præcipimus tibi ꝙ venire facias coram ţe & corā custodibus placitorū coronæ nostræ in pleno comitatu tuo duodecim tam milites quàm alios

[1] "sufficit," MS. Rawl. C. 160.

except against the writ or against the person of the claimant, or in some other manner for many causes and for many reasons, as below concerning exceptions will be stated more fully, when the claimant has propounded his declaration, has supported it, and has proved it according to some. For it would not be sufficient to say that the tenant had such an entry as he himself says, unless he can show that he is entitled to the action, and that the estate ought to revert to him after the term by reason of the seysine of his ancestor, concerning whose seysine he has made mention, he ought not however to count as through a writ of right, unless it be that the writ of entry is turned into a writ of right. For it is sufficient if he says, I claim so much land as my possessory right, if he holds it for life, or as my inheritance, if he holds it in fee, and into which so-and-so has not an entry except through so-and-so, &c., for this count suffices only for seysine in a possessory judgment, as if he has granted it for a term or in fee, who is only tenant for life in some manner. But if he has made mention of use and profits, and in his own domain as of fee, an answer may be made as in a writ of right, and the tenant may defend himself by battle or by a great assise, which has no place in this writ. For the tenant may deny the right of the claimant and such an entry through such a person, and say that he had not an entry through such a person, concerning whom the writ speaks, nay through so-and-so another person, and thereupon may put himself upon an inquest, and let such a writ be made concerning an inquest into the truth, unless the tenant has confessed it to be so without an inquest. The form of the writ shall be of this kind, if the inquest ought to be held in the county. f. 319 b.

4. If the tenant answers that

The king to the viscount greeting. We enjoin you, that you cause to appear before you and before the keepers of the pleas of our crown in your full county

per talem nominatum in brevi, sed per alium talem.

liberos, legales, & discretos homines de visneto tali, per quos rei veritas meliùs sciri poterit, & qui A. de N. nulla affinitate attingant, & etiā qui nullo modo sūt essoniabiles, ad recognoscendū super sacramentū suum, si p̃dictus A. aliud jus vel alium ingressum habuerit in talem terram cum ptinentiis in tali villa, quàm per B. fratrem C. cujus hæres ipse est, qui terrā illam ei dimisit ad terminū qui p̃teriit, vel si A. ingressum habuit p̱ D. qui terram illam dedit in feodo (ut idē A. dicit), quia tam prædict⁹ A. quàm p̃dictus C. posuerunt se inde in juratā illam. Et inquisitionē quam inde feceris scire facias justic. nostris apud W. ad talem terminū evidenter, distinctè, et apertè per literas tuas sigillatas sigillo tuo, & sigillis prædictorum custodum placitorum coronæ nostræ, & per duos vel quatuor ex illis per quorum sacramentum inquisitionem illam feceris, & habeas ibi hoc breve & nomina eorum per quorum sacramentum inquisitionem illam feceris. Et ita per affirmationē petentis & contradictionē tenentis fit discussio per patriam de veritate, & secundum hoc aut remanebit tenens in seysina quous$\bar{q}$ petens sibi perquisiverit per breve de recto, vel petens recuperabit seysinam suam per inquisitionem. Si autem fieri debeat inquisitio coram justiciariis & nō in comitatu, tunc fiat hoc modo.

5. Breve, si juratores venire debeant coram justiciariis.

Rex vicecomiti salutem. Præcipimus tibi quòd venire facias coram nobis vel coram justiciariis nostris apud Westmonasterium duodecim &c. ad recognoscendū &c. si &c. quia tā &c. & interim terram illam videant, & se inde interim certificent, q̱ nos vel justiciarios nostros ad præfatum terminum pleniùs inde certificare possunt, & habeas ibi nomina recognitorum, & hoc breve. T. &c.

court twelve as well knights as other free, loyal, and discreet men of such a visne, through whom the truth of the matter may be more conveniently known, and who are not in any way connected with A. de N. by affinity, and who are in no manner essoinable, to recognise upon their oaths, if the aforesaid A. has had any other right or any other entry into such a land with its appurtenances in such a vill, than through B. the brother of C. whose heir he is, who demised that land to him for a term which has passed, or if A. has had entry into it through D. who granted that land to him in fee (as the said A. says), because as well the aforesaid A. as the aforesaid C. have put themselves thereon upon the said jury. And certify the inquest, which you have held thereon, to our justiciaries at Westminster at such a term evidently, distinctly, and openly by your letters sealed with your seal and with the seals of the aforesaid keepers of the pleas of our crown, and by two or four of those by whose oath you have held that inquest, and have there this writ and the names of those by whose oath you have held that inquest. And thus upon the affirmation of the claimant and the contradiction of the tenant a discussion of the truth is made by the country, and according to it either the tenant will remain in seysine, until the claimant has obtained for himself a writ of right, or the claimant will recover his seysine through the inquest. But if the inquest ought to be held by the justiciaries and not in the county court, then let proceedings be in this manner.

not through so-and-so named in the writ, but through so-and-so a different person.

5. A writ if the jurors ought to come before the justiciaries.

The king to the viscount greeting. We enjoin you that you cause to appear before us or our justiciaries at Westminster, twelve &c., to recognise &c. if &c., because as well &c., and meanwhile let them view the land and certify themselves thereon in the mean time, that they may be able to certify more fully thereon our justiciaries at the aforesaid term, and have there the names of the recognisors and this writ. Witness &c.



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## Cap. II.

1. De responsione et exceptionibus tenentis contra petentem.

Dictum est supra cùm petens intensionē suam simpliciter proposuerit, & tenens contra intentionē suā excipere noluerit, sed simpliciter posuerit se in juratā de ingressu. Nūc autē dicēdum est si tenens excipere voluerit contra intentionē, inprimis necesse est q̄ petens intentioni suæ fundamentū imponat, s. q̄ doceat ad ipsū pertinere actionē, quia ipse tradiderit ad terminū, vel aliquis antecessor suus, cujus hæres ipse sit. Et non f. 320. sufficit quòd doceat rem ita esse traditā p̄ ipsum vel antecessores suos, nisi ostendat q̄ tenēs talē habuerit ingressū, & p̄ tales, sicut ipse dicit. Itē non sufficit ita p̄ponere et fundare intentionē suā, nisi propositā et fundatā p̄baverit, cùm simplici voci alicujus non sit fides adhibenda, secundum [1] q̄ p̄batur in itinere episcopi Dunholm̄ et M. de P. in com̄ Eborū anno regni regis H. 3. de Aghevilda Murdac.

2. Cum partes in judicio comparuerint.

Constitutis igitur partibus in judicio, aut habet petens p̄bationē aut nō habet, vel non nisi sectā tantū, quæ nō inducit nisi tantū p̄sumptionē, et quæ nō sufficit, quia in cōtrariū admittit defēsionē p̄ legē. Si autē nullā ōnino habuerit p̄bationē p̄ se, videtur q̄ tenens nō habet necesse ei in aliquo respōdere p̄pter defectum p̄bationis, quia possit deficere p̄batio licet nunquā deficiat jus, secundū [2] q̄ p̄batur in itinere episcopi Dunholm̄ et Marī de Pateshul in comitatu Eborū año regis H. 3. de Reginaldo Murdaker. Et q̄ cadit breve videtur, nisi sit qui sustineat, q̄ de gratia justic. possit & debeat ei subveniri p̄ juratā patriæ, sed cum

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[1] "secundum quod" down to "Murdac" omitted MS. Rawl. C. 160.

[2] "secundum quod" down to "Murdaker" omitted MS. id.

## Chapter II.

We have treated above the case when the claimant has propounded his declaration, and the tenant has been unwilling to except against his declaration, but has simply put himself upon a jury concerning entry. But now we must speak of the case, if the tenant wishes to except against the declaration, in the first place it is necessary that the claimant should set up a foundation for his declaration, to wit, that he should show that he is entitled to bring an action, because he himself delivered it for a term, or some ancestor whose heir he is. And it is not sufficient that he should show, that the estate was so delivered by himself, or by his ancestors, unless he can show that the tenant had such an entry and through such persons, as he himself says. Likewise it is not sufficient for him thus to propound and set up his declaration, unless he shall prove it when so propounded and set up, since faith is not to be given to the single voice of an individual, according to what is proved in the iter of the bishop of Durham and Martin de Pateshull in the county of York, in the third year of the reign of king Henry, concerning Aghevilda Murdac.

1. Of the answers and exceptions of the tenant against the claimant.

f. 320.

The parties therefore having appeared in court, the claimant has or has not his proof, or only a sect, which does not give rise to more than a presumption, and which is not sufficient, because it admits in contradiction a defence by law. But if he has no proof at all on his side, it seems that the tenant is not under the necessity of answering in any thing to him on account of his default of proof, because the proof may fail, although the right may never fail, according to what is proved in the iter of the bishop of Durham and Martin de Pateshull in the county of York, in the third year of king Henry, concerning Reginald Murdaker. And that the writ fails seems to be the case, unless there be some one to support it, which by the favour of the justiciary can and may be

2. When the parties have appeared in court.

causæ cognitione, vel quia forte instrumenta ꝑbationis deperdita sunt, vel quia illa ad ꝑbationem suā faciendā ad manum non habuerit, vel sine difficultate habere non poterit. Quo casu dabitur alius dies, ut de termino Paschæ añ regis Henrici decimo quarto in comitatu Dors. de Matilda quæ fuit uxor Stephani de Bosco &c. Si autē instrumētum ꝑbationis ꝑtulerit de termino et de dimissione, et ei contradicatur, ꝑbetur veritas instrumenti per testes et per patriā, qua ꝑbata, adhuc erit necesse probare ingressum et terminū p̃teritum, sed contra excipiatur, alioquin inutilis erit actio. Si autē instrumentū ab initio cōcedatur, et tenens excipiat de feoffamento, ut si cōcedat quòd primò receperit ad terminum, et q infra terminum datum sit ei tenemētum in feodo. Si petens feoffamēto cōtradicat et chartæ, ꝓcedet inquisitio de feoffamēto ꝑ testes et ꝑ patriā. Et quo casu si feoffamētum sufficiens sit et bonū, retinebit tenens, et sic terminabitur negotium. Si autē feoffamentū nullū, sic recuperabit petens sine aliquo regressu, quem tenens habere possit ad terminū, quia in eo, q se tenuerit ad feodū, tacitè termino renuntiavit. Si autem petens ꝑ se nullam habeat ꝑbationem nisi simplex dictum, et simplicem vocem de dimissione et termino, et tenens ex abundanti (licet ad hoc non teneretur) ꝓferat chartā de feoffamēto, quæ dedici non potest, tenens in seysina sua remanebit: ut de ultimo itinere M. dė P. in comitatu Suff. de Wilhelmo de Wanham et Matilda uxore ejus, nec etiam tenens sive petens audiendus esset, si se ponere vellet super patriam

Britton, v. ch. xvi. § 1.

done by the help of a jury, but with cognisance of the cause, either because by accident the instruments of proof have been lost, or because he may not have at hand or cannot without great difficulty procure the instruments to establish his proof. In which case another day will be allowed to him, as in Easter term in the fourteenth year of king Henry, in the county of Dorset, concerning Matilda, who had been the wife of Stephen de Bosco. But if he has produced an instrument in proof of the term and of the demise, and it be contradicted, let the truth of the instrument be proved by witnesses and the country, which having been proved it will still be necessary to prove the entry and the past term, but it may be excepted against it, otherwise the action will be useless. But if the instrument be admitted from the commencement, and the tenant except on the ground of a feoffment, as if he should concede that he received it at first for a term, and that within the term the tenement was granted to him in fee. If the claimant contradicts the feoffment and the charter, let an inquest proceed concerning the feoffment by witnesses and the country. And in which case if the feoffment be sufficient and good, the tenant will retain the tenement, and so the business will be terminated. But if the feoffment is null, the claimant will thereupon recover without any recourse that the tenant can have to the term, because inasmuch as he has clung to the fee, he has tacitly renounced the term. But if the claimant has by himself no other proof except his simple assertion and his single voice concerning the demise and term, and the tenant has superfluously (for he is not bound to this) produced a charter of feoffment, which cannot be gainsayed, the tenant will remain in his seysine: as in the last iter of Martin de Pateshull in the county of Suffolk, concerning William of Wanham and Matilda his wife, for neither the tenant nor the claimant would have to be heard, if he wished to put himself upon the

de ingressu suo, cū nullā habeat pro se præsumptionem, nec contra chartam (ut videtur) respondere poterit, quæ proponitur in modum exceptionis, cum actio sua non teneat super principali. Item esto quòd petens dicat quòd tenens non habeat ingressum nisi per A. et tenens respondeat et dicat quòd ingressum habeat per ipsum petentem, vel aliquem antecessorē suū qui dederint, recognoverint, vel remiserint per chartam suam, quæ probata hoc testetur. Si petens cûm ad chartam responderit illam concedat, et q facta fuit, sed tali
f. 320 b. tempore quòd valere non debet, quia cognoscit chartam quocunquè modo, & qualitercunq̃ chartam concesserit per consequens ingressum p talem petentem, s. seipsum vel antecessorem suū qualitercunq̃, & non p eum quem petens nominat in brevi suo, & ideo cadit actio, & tenens sine die, & petens sibi pquirat p aliud bře: ut de itinere W. de Ralegh in coñ Warř de Hugone de Cayel Marestorp.[1] Et cùm objectū fuerit feoffamtum, & excipiatur contra chartam à petente, ubi pbationem habuerit de ingressu, vel saltem p̃sumptionem, & uterq̃ se posuerit in juratam, tunc fiat recognitio p hæc verba. Ad recognoscendum videlicet si p̃dictus A. aliud jus, vel alium ingressum habuit in prædictam terram quàm p p̃dictum B. qui terram illam ei dimisit ad terminū qui præteriit, vel si idem A. ingressum habuit in p̃dictam terrā p eundem B. qui terram illam ei vendidit vel dedit in feodo p chartā suam, ut idem A. dicit. Et unde etiam cognoscit q prædictus B. terrā illam primò ei dimisit ad terminū, & durante termino illam ei dedit in feodo per chartā suam. Et ferè per eadem verba fieri poterit recognitio, si partes

[1] "Cayelmaresthorpe," MS. Rawl. C. 160.

country concerning his entry, when he has no presumption on his behalf, and cannot reply against the charter (as it seems), which is propounded in the manner of an exception, when his action does not hold upon the principal question. Likewise let it be that the claimant says that the tenant has no entry but through A., and the tenant replies and says that he has an entry through the claimant himself, or some of his ancestors, who granted, recognised, or remitted the tenement by their charter, which being proved bears witness of this. If the claimant, when he has replied to the charter, admits it and that it was executed, but at such a time that it ought not to be valid, because he acknowledges the charter in some way or other, and has admitted the f. 320 b. charter somehow or other, and consequently ingress through so-and-so the claimant, to wit, himself, or his ancestor in some way or other, and not through him, whom the claimant names in his writ, and accordingly the action falls and the tenant is without a day, and the claimant should provide for himself by another writ, as in the iter of William de Ralegh in the county of Warwick, concerning Hugh de Cayel Marestorp. And when a feoffment has been objected, and an exception is raised against the charter by the claimant, when he has a proof concerning the entry or at least a presumption, and each has put himself upon a jury, then let a recognition be made through these words: "To recognise forsooth, if "the aforesaid A. had any other right or any other "entry into the aforesaid land than through the afore-"said B., who demised that land to him for a term which "has passed, or if the said A. had an entry into the "aforesaid land through the said B., who sold that land "to him or granted it in fee by his charter as the said "A. says." And whereupon he acknowledges that the aforesaid B. first demised that land to him for a term, and during that term granted it to him in fee by his charter. And the recognition may be made in nearly

absq̃ ꝓbatione vel instrumentorum exhibitione se gratis posuerint in juratam. Item excipi poterit contra petētem, q̃ alius majus jus habet quam ille qui petit. Item q̃ alius dimisit & non ille de quo fit mentio in br̃i ꝑ errorem. Item q̃ terminus non præterierit, & si terminus præterierit quantùm ad primum instrumentum & primam conventionem, ꝓgatus fuit terminus ꝑ aliam conventionem & ꝑ aliud instrumentum, q̃ quidem statim exhibeat. Item excipere poterit contra petentem q̃ terminus excedit tempus assisæ mortis antecessoris, & ideo q̃ deficit probatio. Et infinitæ sunt exceptiones de quibus non est necesse hîc facere mentionē, quia de illis inferiùs pleniùs dicendum erit.

3. De exceptione contra ingressum, et quod tenens poterit renuntiare exceptioni, si voluerit, et vocare alium quam eum, qui in brevi nominatur, warantum, licet hoc sit contra seipsum.

Cùm autē tenens excipiat, & dicat q̃ non habet ingressum ꝑ talem, de quo breve loquitur, immo ꝑ alium talē, si petens hoc dedicere non possit, vel si negaverit & recognitum sit ꝓ juratam q̃ sic cadit breve, quia non convenit veritati. Sed reverâ bene poterit tenens (si voluerit) renuntiare illi exceptioni contra breve, & sustinere breve (& hoc erit potius ad dānum suum quàm ad cōmodum) & warantum vocare aliū quàm illum, qui in brevi nominatur. Sed ad hoc arctari non poterit, nisi velit gratis renunciare exceptioni. Et q̃ ita facere possit si velit, ꝓbatur in rotulo de termino. Volunt tamen quidam arctare tenentem, q̃ ipse alium talem quem nominavit, vocet ad warantum, quod non est concedendum, quia si teneretur talem vocare ad warantum præcisè & warantizaret, ita possit ille aliū vocare, & ille alius tertiū, & sic in infinitū usquè ad mille. Et si sic, non limitaretur breve de

the same words, if the parties without any proof or the exhibition of instruments put themselves gratuitously upon a jury. Likewise it may be excepted against a claimant, that another person has more right than he who claims. Likewise that another person demised the tenement, and not he of whom mention is made in the writ by error. Likewise that the term has not passed, and if the term has passed as far as regards the first instrument and the first convention, the term was prorogued by another convention and by another instrument, which he should forthwith exhibit. Likewise he may except against a claimant that the term exceeds the time of an assise of mortdancester, and on that ground, that the proof fails. And there are infinite exceptions, concerning which it is not necessary here to make mention, because we shall have to speak about them more fully below.

3. Of an exception against an entry and that the tenant may renounce an exception, if he wishes, and call another person than him who is named in the writ, as a warrantor, although this may be against himself.

But when the tenant excepts, and says that he has not an entry through so-and-so, of whom the writ speaks, nay, by a certain other person, if the claimant cannot gainsay this, or if he has denied it, and it has been recognised by a jury, then the writ falls, because it does not agree with the truth. But in truth the tenant well may, if he wishes, renounce that exception against the writ, and sustain the writ (and this will be rather for his loss than for his advantage), and may call a warrantor other that him who is named in the writ. But he cannot be constrained to this, unless he wishes gratuitously. And that he may do this if he will, is proved in the roll of the term. Some persons however desire to constrain the tenant, that he should call such other person whom he has named as a warrantor, which is not to be allowed, because if he were bound to call such a warrantor precisely, and he should warrant, so he might call a second one, and the said second one might call a third, and so without end up to a thousand. And if so, the writ of entry would not be limited within

ingressu infra suos limites & suos gradus: nec habet tenens necesse vocare talem ad warantum, cùm cadit breve per exceptionem, eò quòd ingressum non habuit per talem in brevi nominatum, nec egeat quòd alius non defendat in sua possessione, cùm sufficiat ei sua propria exceptio ad defensionem. Et quòd cadere debet in hoc casu breve, inveniri poterit de termino Paschæ anno regis Henrici septimo in comitatu Buck. de Guidone de Windeslore.[1] Et ad hoc facit de termino eodē in comitatu Kanc. de Alicia quæ fuit uxor
f. 321. Richardi, & in aliis multis locis. Sed cùm ingressus sit talis, sicut petens dicit, bene poterit tenens (cùm cognoverit ingressum) vocare warantum suum, per quem ipse ingressum habuerit, & quilibet suum usquè ad quartum gradum, & non ultra, dum tamen tenens ipse tenuerit ad vitam ut liberum tenementum, vel in feodo sibi & hæredibus suis, vel ad feodi firmam, vel hujusmodi. Revera si impetratum fuerit super firmarium, non cadit breve, quia ipse poterit vocare warrantum, quasi non,[2] sic amitteret usufructuarius usumfructum, quod esset iniquum, cûm tantundem juris habet in usufructu quantum proprietarius in libero tenemento, & cùm veniat breve, super eum vocet warantum, & si fuerit defensus, retinebit usumfructum. Si autem non, habebit regressum versus suum warrantum de usufructu, & warrantus suus si ulteriûs vocaverit & fuerit ei warrantizatum de libero tenemento, & de excambio. Si autem ad terminum annorum, credo aliud est dicendum, cùm ipse non teneat in dominico tenementum & secundum quod petitur, nisi tantum usum fructum, & multo minus si teneat de anno in annum. Item quæritur si petatur versus abbatem aliquem vel priorem vel alium religiosum expresso proprio nomine vel non expresso, & ubi dicatur & in quā non habuit

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[1] "Windelesore," MS. Rawl. C. 160. | [2] "quod si non, sic amitteret," id.

its bounds and its degrees, nor is the tenant under the necessity of calling so-and-so, as a warrantor, since the writ abates through the exception, inasmuch as he had not an entry through so-and-so as named in the writ, nor would he want that another should defend him in his possession, since his own exception would suffice for his defence. And that the writ ought to abate in this case may be found in Easter term in the seventh year of king Henry, in the county of Bucks, concerning Guy de Windeslore. And for this makes the case of Alicia, who was the wife of Richard, in the same term in the county of Kent, and many other cases. But when the f. 321.
entry is such as the claimant says, the tenant (when he has acknowledged the entry) may well call his warrantor, through whom he had his entry, and each his own up to the fourth degree, and not beyond, provided, however, the tenant himself has held for life as a free tenement, or in fee for himself and his heirs, or as a fee-farm or such like. In truth, if it has been sued out against the farmer, the writ does not abate, because he may call a warrantor, as if not, so the usufructuary might lose the usufruct, which would be inequitable, since he has as much right in the usufruct as the proprietor in the free tenement, and when the writ comes, let him call a warrantor upon it, and if it be defended, he will retain the usufruct. But if not, he will have recourse against his warrantor concerning the usufruct, and his warrantor if he has further called a warrantor, and he has had his free tenement warranted, and concerning compensation for it. But if for a term of years, I believe something else is to be said, since he does not hold the free tenement in domain and according to what is claimed, except only the usufruct, and much less if he holds from year to year. Likewise it is questioned, if a claim be made against an abbot or a prior or some other religious person with his proper name expressed or not expressed, and where it is said and "into which he had

ingressum nisi per talem abbatem prædecessorem suum, & cadat breve si plures abbates medii intervenerint ? & an faciunt gradum de abbate in abbatem sicut de hærede in hæredem ? & videtur quòd non magis, quàm in cōputatione descensus, quia etsi alternetur persona, non propter hoc alternatur dignitas, sed semper manet.

## Cap. III.

1. Breve, si heres petat quod antecessor dimisit ad terminum.

Dictum est supra, si ille petat qui dimisit, nunc autem dicetur si hæres petat quod antecessor dimisit ad terminum. Forma brevis talis est. Rex vicecomiti salutem. Præcipe tali, quòd justè & sine dilatione reddat tali, tantum terræ cum pertinentiis in tali villa quod clamat esse jus & hæreditatem suam, & in quod prædictus talis non habet ingressum nisi per talem, cui talis pater vel mater, frater vel soror, avus vel avia, avunculus vel amita, consanguineus vel consanguinea, sive prædecessor prædicti talis (cujus hæres ipse est) illud dimisit ad terminum qui præteriit (ut dicit). Et nisi fecerit, et idem talis fecerit te securum de clamore suo prosequendo, tunc summoneas per bonos summonitores præfatum talem, quod sit coram justitiariis nostris ad primam assisam cum in illas venerint, ostensurus quare non fecerit, et habeas ibi summonitores et hoc breve. Teste, &c.

f. 321 b.

## Cap. IV.

1. Breve, si vir donationem fecerit de hæreditate.

Si quis donationē fecerit de hæreditate uxoris, quæ ei in vita sua contradicere nō potuit, tūc post mortē viri cōsulitur ei p tale breve. Rex vic. salutē. Præ-

not an "entry except through such an abbot his predeces-
" sor," and the writ should abate, if several intermediate abbots have intervened? and whether they make a step from abbot to abbot, as from heir to heir? and it seems not more so, than in a computation of descent, because although the person be alternated, the dignity is not thereupon alternated, but it remains always.

## Chapter III.

We have discussed above, if he claims, who has demised: now then it shall be discussed, if the heir claims what his ancestor has demised for a term. The form of the writ is of this kind. The king to the viscount greeting. Enjoin so-and-so, that justly and without delay he restore to such an one so much land with its appurtenances in such a vill, which he claims to be his right and his inheritance, and into which the aforesaid so-and-so has not entry except through a certain person, to whom such an one's father or mother, brother or sister, grandfather or grandmother, uncle or aunt, cousin-male or cousin-female, or the ancestor of the aforesaid such an one (whose heir he himself is) demised it for a term, which has passed as he says. And unless he does so, and if the said claimant has given you security to prosecute his claim, then summon by good summoners so-and-so aforesaid, that he appear before our justiciaries at the first assise, when they have come into those parts, in order to show cause wherefore he has not done so, and produce there the summoners and this writ. Witness, &c.

1. A writ, if an heir claims what his ancestor demised for a term.

## Chapter IV.

f. 321 b.

If any one has made a grant of the inheritance of his wife, who could not contradict it during his lifetime, then provision is made for her after his death by a writ of this kind. The king to the viscount greeting. En-

1. A writ, if a husband has made a grant of the inheri-

uxoris, cui ipsa in vita sua contradicere non potuit.

cipe tali q̄ juste &c. reddat tali quæ fuit uxor talis, tãtū terræ cū p̄tinentiis in tali villa, q̄ clamat esse jus & hæreditatē suā vel maritagiū suū, & in q̄ p̃dictus talis non habet ingressum nisi p̄ prædictū talē quondā virū suum, qui illud ei dimisit, cui ipsa in vita sua cōtradicere non potuit (ut dicit), & nisi fecerit, & idē talis fecerit te securū &c., ut supra. Ad quē ingressum tenens poterit multipliciter respondere, secundū q̄ superiùs dictum est. Et etiam poterit defendere ingressum p̄ p̃dictum virum, & dicere quod habuit ingressum per p̃dictam mulierem, antequam esset desponsata tali viro, vel post mortē viri sui, & hoc p̄bare per instrumenta, & per testes simul cum patria, vel ex toto se ponere in juratam, & secundum talia verba formari poterit inquisitio. Item concedere possit quòd habuit ingressum per talem virum suum, & dicere quòd p̃dicta talis postea in legia viduitate sua confirmavit donum viri sui, vel q̄ in legia viduitate sua remisit ei totum jus & clamorem suum. Item ad hoc q̄ dicit (cui in vita contradicere non potuit) respondere poterit q̄ p̃dicta mulier personaliter fuit in curia dñi regis cum viro suo, & donū illud liberaliter & bona voluntate sua sine aliqua coactione concessit, & ratum habuit, q̄ quidē terminari poterit per inspectionem rotulorum, q̄ quidem non esset si hoc fieret extra curiam regiam, quia ibi fieri possunt coactiones contra voluntatē, q̄ quidem non fieret in curia domini regis. Ibi enim nulla violentia infertur, nec metus incutitur, nec est verisimile aliquem in curia domini regis per violentiā cōpulsum esse ad aliquid contra voluntatem faciendum, vel non faciendum, cùm ibi tutum invocari possit auxilium. Item distinguendum est in hoc casu, utrum

Britton, v. ch. x. § 13.

join so-and-so that justly, &c. he restore to such an one, who was the wife of such an one, so much land with its appurtenances in such a vill, which she claims to be her right and her inheritance or her marriage portion, and into which so-and-so aforesaid has not had any entry except through such an one aforesaid formerly her husband, who demised it to him, which she herself could not contradict during his lifetime, as she says, and unless he has done so and the said so-and-so has given you security &c. as above. To which entry the tenant may answer in manifold ways, according to what has been said above. And he even may contest the entry through the husband aforesaid, and say that he had an entry through the aforesaid woman before she was espoused to her said husband, or after the death of her husband, and may prove it by instruments and by witnesses together with the country, or put himself on the whole case upon a jury, and the inquest may be shaped according to such words. Likewise he may admit that he had an entry through such person her husband, and may say, that the aforesaid woman afterwards during her free widowhood confirmed the gift of her husband, or that in her free widowhood she remitted to him all her right and her claim. Likewise to this which she says, (which she could not contradict during his lifetime,) he may answer that the aforesaid woman was personally in the court of the lord the king with her husband, and allowed the grant freely and of good will without any compulsion and ratified it, which may be determined by an inspection of the Rolls, which would not be, if this had been done outside the court of the king, because there might be there enforced compulsions against the will of a party, which could not be done in the court of the king. For there no violence is offered, nor fear caused, nor is it likely that any one in the court of the king has been compelled by violence to do anything, or not to do it, against his will, since there a safe help may be invoked. Likewise a

tance of his wife, which she could not contradict during his lifetime.

donatio facta fuerit per virum ad hoc q revocetur, vel tenet ex causa honesta & necessaria, & communi utilitate tam viri quám uxoris, vel ex causa voluntaria tantùm. Si autem ex causa honesta, ut si communi filio fiat donatio, vel in maritagium cum filia, hoc erat in causa honesta, & ideo tenenda ubicunquè facta. Si autem tantûm ex causa voluntaria, & non utili, tunc aut intervenerit coactio vel non. Si autem coactio intervenerit, quod de facili perpendi poterit per vultū & per gestū mulieris, quamvis in curia dñi regis nunquam fiat inde cyrographum, sed vix inrotulatio concedatur. Et notādum, q irrotulatio per se sine cyrographo nunquam tollet actionem uxoris post mortem viri sui, & si uxor præmoriatur, hæres eorum cōmunis nunquā recuperabit per aliquam actionē, cûm warrantizare teneatur ut hæres patris, propter homagium & servicium q ei accidit ex feoffamento patris, cōtra donum patris q mater in vita sua revocavit, ne sit ejusdem tenementi dominus & tenens. Si autem, cùm mater peteret, vocaretur ad warrantum & amitteret, ita irritum esset donum patris, & dissolveretur homagium inter ipsum & feoffatum à patre suo, & ipse teneretur ad eschambium de hæreditate patris, & cū mater obtinuerit, & descēdat materna hæreditas ad ipsū, nunqm reviviscit homagium, q p matrē, quæ per juditiū obti-
f. 322. nuit, semel est extinctum. Si autem sic feoffaverit vir tenendum de dñis capitalibus, vel si aliū habuerit antenatum de alia uxore, aliud erit, quia tūc nō erit

distinction must be made in this case, whether the grant has been made by the husband with the object of its being revoked, or it holds from an honest and necessary cause and the common interest of the husband and the wife, or only from a voluntary cause. But if from an honest cause, as if a donation is made to a common son, or a marriage portion is given with a daughter, this was in an honest cause, and is therefore to be upheld wheresoever made. But if only from a voluntary cause and not for their interest, then either compulsion will have intervened or not. But if compulsion has intervened, which may easily be discovered from the look and the gesture of the woman, although in the court of the lord the king, a chirograph would never be made thereof, and scarce an enrolment would be allowed. And it is to be noted that an enrolment by itself without a chirograph will never take away a right of action on the part of a wife after the death of her husband, and if the wife predeceases him, their common heir will never recover by any action, since he is bound to warrant as the heir of his father, on account of the homage and service which accrue to him from the feoffment of his father, against the grant of his father, which his mother has revoked during her lifetime, lest he should be the lord and the tenant of the same tenement. But if, when his mother was the claimant, he has been called to warrant and he has lost, the grant of his father would thus be void, and the homage would be dissolved between him and the feoffee of his father, and he himself would be bound to make compensation from the inheritance of his father, and when his mother has prevailed, and his maternal inheritance has descended to him, the homage never revives, which has been once extinguished through his mother, who has prevailed by a judgment. But if the husband has so enfeoffed it to be held of the chief lords, or if he has had another earlier-born son by another wife, it will be otherwise, because in that case the com- f. 322.

filius communis hæres patris, sed tantum matris: & sic habebit repetitionem, quia ad warrantum non tenetur: sicut de itinere in comitatu Eborū. Si autē coactio non intervenerit sed mulier hoc affectaverit, q̄ de facili ꝑpendi poterit per gestū & per vultum, concedatur fieri cyrographū. Mulier enim aliquando plus amat donatoriū quàm seipsam vel puerū suum, & bona cautela est in irrotulatione facere mentionem de voluntate mulieris, secundū quod fuerit gratuita vel coacta. Sed ad hoc quòd tale breve cōpetat vel non de donatione viri, refert utrum vir præmoriatur vel uxor: si autem uxor præmoriatur, tale breve non competit communibus hæredibus uxoris & viri, quia si eis competeret tale breve, ita posset impugnare & revocare factum patris, q̄ teneretur defendere, cùm sit hæres patris ex tali donatione. Sed videtur quòd hoc non sufficit dicere, quia factum patris non tenetur defendere de hæreditate matris, cùm ex parte patris nulla hæreditas ei descendat, & cùm non sit hæres patris sed filius tantùm, & hæres matris propter hæreditatem descendentem ex parte matris, & cûm hæres dicatur ab hæreditate & non e converso. Si autem aliqua hæreditas descendat à patre, factum patris tenetur warrantizare & defendere, quatenus hæreditas patria se extendat & non ultra, si mater obtinuerit, sive talis progenitus fuerit ex primo viro vel secundo. Et unde videtur quòd tale breve competat hæredi, & secundum quod videri poterit in itinere episcopi Dunholm̃ & Martini de Pateshul anno regis Henrici tertio in comitatu Eborum in fine rotuli, ubi continentur verba ista: &

mon son will not be the heir of the father, but only of the mother, and so he will have a right of reclaiming it, because he is not bound to a warranty, as in the iter in the county of York. But if compulsion has not intervened, but the woman has affected it, which may easily be discovered by her gesture and her look, let it be allowed for a chirograph to be made. For a woman sometimes loves a donatory more than herself or her son, and it is a good precaution in the enrolment to make mention of the will of the woman, according as it has been voluntary or compulsory. But in order that such a writ should be suitable or not concerning the grant of the husband, it is important whether the husband or the wife has died first: but if the wife dies first, such a writ is not suitable for the common heir of the wife and husband, because if he were entitled to such a writ he would thus be able to impugn and revoke the act of his father, which he would be bound to maintain, since he is the heir of his father from such a grant. But it seems that it is not sufficient to say this, because he is not bound to defend the act of his father concerning the inheritance of his mother, since on the part of his father no inheritance descends to him, and since he is not the heir of his father but only the son, and the heir of his mother on account of the inheritance descending to him on the part of his mother, and since he is called heir from the inheritance, and not conversely. But if any inheritance descends from the father, he is bound to warrant and to maintain the act of his father, as far as the inheritance of the father extends and no further, if his mother has prevailed, whether such son has been begotten by the first husband or by the second. And hence it seems, that the heir is entitled to such a writ, and according to what may be seen in the iter of the bishop of Durham and Martin de Pateshull in the third year of the reign of king Henry in the county of York at the end of the roll, where these words are contained, "and into which

in quam talis non habet ingressum nisi per talem quondam virum ipsius talis uxoris matris ipsius talis, cujus hæres ipse est, qui illam ei vendidit in vita sua, cui prædicta talis in vita sua contradicere non potuit.

2. Breve, si hæres fuerit ex alio viro, et si vir hæredem habuerit ex alia uxore.

Sed videtur e contra, quòd ad ipsum non pertineat tale breve, ex quo mater in vita sua donum non revocavit, & ideo dissimulando injuriam concessit, nec videtur hæredi injuriatum, ex quo antecessor injuriam dissimulando sustinuit: secundum illud quod non potest nocere hæredi quod antecessori non nocuit. Et unde videndum utrum uxor diu vixit post mortem viri vel cito obiit, vel in vita viri. Sed revera (quicquid dicatur) non competit hæredi tale breve, sed nec breve ad terminum qui præteriit, quia replicatio quæ competeret mulieri si viveret, non competit hæredi, sicut videri poterit apertè: ut si ipsa dum viveret peteret, excipi poterit contra ipsam de donatione, contra quam replicare posset quòd viro suo contradicere non potuit, & ista replicatio non jacet in ore hæredis, quia cûm dicat, mater mea contradicere non potuit, per hoc ostendit quod replicatio illa competit matri & non ei, nec congruè dicere posset hæres, quòd oportuit matrem facere voluntatem domini sui, nec constare poterit hæredi de voluntate matris, quæ fortè si viveret nunquam donum illud revocaret. Revera, licet nullam habeat hæreditatẽ
f. 322 b. ex parte patris, & sic non hæres (ut videtur), petere non potest, cùm teneatur warrantizare, licet mater petere posset, warrãtizare tenetur ut hæres, quia in hoc erit hæres patris ꝑpter homagiũ et servitiũ ꝙ ei

" he had no entry except through such a one formerly " the husband of the said wife, the mother of him whose " heir he himself is, who sold it to him during his life- " time, whom his said wife could not contradict during " his lifetime."

2. A writ, if the heir has been by another husband and if the husband has had an heir by another wife.

But it appears on the contrary, that such a writ does not pertain to him, since his mother in her lifetime did not revoke the grant, and therefore by dissimulating allowed the injury; nor does injury appear to have been done to the heir, since the ancestor supported the injury by dissimulating: according to that saying, that what has not been hurtful to an ancestor cannot be hurtful to his heir. And hence it is to be seen, whether the wife lived a long time after the death of her husband, or died soon after it, or in the lifetime of her husband. But (whatever may be said), such a writ is not suitable to the heir, nor again a writ for the term which has passed, because the replication which would be suitable to the woman, if she were alive, is not suitable to the heir, as may be seen clearly, as if she claimed whilst she was alive, an exception might be raised against her concerning the grant, against which she might reply that she could not contradict her husband, and that replication does not lie in the mouth of the heir, because when he says, my mother could not contradict, he thereby shows that that replication is suitable to his mother and not to him; nor can the heir congruously say that it was incumbent upon his mother to execute the will of her lord; nor can the heir be certain concerning the will of his mother, who, perhaps, if she were alive, would never revoke that grant. In truth, although he has no inheritance on the part of his father, and so he is not heir as it seems, he cannot claim, since he would be bound to warrant, although his mother might claim, he f. 322 b. is bound to warrant as the heir of his father, for he will be the heir of his father in this respect, on account of the

descendere debet de seysina patris, licet feoffamẽtum sit factū de hæreditate matris, poterit enim quis alienam rem dare tenendam de se & hæredibus suis, & ratione talis feoffamenti erit filius hæres suus, licet ei alia hæreditas non descendat, sed ad escābium non tenetur, nisi de eo quæ ei descẽdit de hæreditate patris. Sed aliud erit, si pater dederit tenendū de aliis qm de hæredibus suis, sicut de capitalibus dñis vel aliis. Et quid si dicat de uxore & hæredibus suis? hoc non obligat uxorem nec hæredes suos. Sed quid si uxor petierit & hæres communis vocetur ad warrantum? tenetur warrantizare prædicta ratione, & ipsa recuperabit, & hæres cōmunis, cûm nihil habeat de hæreditate paterna, quoad escambiū non tenebitur, licet teneatur ad warrantiam, & post mortem matris succedet ei in terrā illam, & de ea non tenetur facere eschābium, et unde videtur (quicquid alii dicant) q si mater obierit ante virum suum, & hæres uxoris de eodem viro petat, q cùm ad warrantiam teneretur, repelli deberet ab agendo q non recuperet, licet non teneatur ad eschambiū de hæreditate matris. Revera, si neq; pater neq; mater alium habuerint hæredem, ut si pater de alia uxore filium non habuerit, vel uxor filium de alio viro & ipsi duo unicum hæredē, talis hæres revocare non poterit donū patris de hæreditate matris, cum ideo teneatur istum warrantizare ut hæres ratione prædicta. Sed mater hoc facere poterit si virum supervixerit, & sic poterit ad communem hæredem res sic data descendere cùm per factum matris adnihiletur donum patris, q per communem hæredē fieri non poterit. Si autem communem hæredē non habuerit,[1] bene poterit hæres matris donū tale repetere, & hæres

[1] "habuerint," MS. Rawl. C. 160.

homage and service, which ought to descend to him on account of the seysine of his father, although a feoffment has been made of the inheritance of his mother, for a person may grant another person's estate to be held of him and his heirs, and by reason of such a feoffment the son will be his heir, although the other inheritance does not descend to him, but he is not bound to make compensation, except out of that which descends to him from the inheritance of his father. But it will be otherwise if his father has granted it to be held of others than his heirs, as of chief lords or others. And what if he shall say of his wife and her heirs? This does not oblige his wife nor her heirs. But what if the wife has claimed, and the common heir is called as a warrantor? He is bound to warrant for the reason alleged, and she shall recover, and the common heir, as he has nothing of his paternal inheritance, will not be bound to make compensation, although he is bound to a warranty, and after the death of his mother he shall succeed to her in that land, and he shall not be bound to make compensation from it, and hence it seems (whatever others say) that if the mother has died before her husband, and the heir of the wife from the same husband claims, that, since he is bound to a warranty, he ought to be repelled from proceeding so that he should not recover; although he is not bound to make compensation from the inheritance of his mother. In truth, if neither the father nor the mother has any other heir, as for instance, if the father has not a son by another wife, or the wife a son by another husband, and both of them only a single heir, such an heir cannot revoke the grant of his father from the inheritance of his mother, since he is expressly bound to warrant it as their heir for the reason alleged. But the mother may do this, if she has survived her husband, and the estate so granted may descend to the common heir, since the grant of the father is annihilated by the act of the mother, which could not be effected by the common heir. But if they have not had a common heir, the heir of the mother

patris tenebitur aliunde ad warrantiam & escambium, & non hæres matris, & hac ratione habebit actionem post mortem matris.

## Cap. V.

1. Breve, si dos fuerit alienata per secundum virum.

Si forte quis ingressū habuerit p secundū virū de terra, quā uxor habuit in dotē de dono primi viri sui, tūc fiat tale breve. Rex vic. salutē. Præcipe tali q̄ justé &c. reddat tali tantū terræ cū p̄tinentiis in tali villa, qd' clamat esse rationabilē dotē suā, ut[1] de rationabili dote sua, quā habuit de dono talis primi viri sui, & q̄[2] p̄dictus talis nō habet ingressū nisi p̄ talē secundum virū suū, qui illud ei dimisit, cui ipsa in
f. 323. vita sua contradicere non potuit (ut dicit) & nisi fecerit &c. ut supra. Et qualiter respondere debeat & negotium terminari, satis videri poterit superius per exemplum.

2. Breve, si vir dotem alienaverit.

Si vir dotem uxoris alienaverit quam habuit de dono alterius viri, & quæ post mortem uxoris sui reverti deberet ad hæredes primi viri, consulitur hæredi per tale breve. Rex vic. salutem. Præcipe tali quòd juste &c. reddat tali tantū terræ cum pertinentiis &c., & in q̄ idem talis non habet ingressum nisi per talem, qui illud ei dimisit, & qui illud tenuit in dotem talis uxoris suæ de dono talis quondam viri sui, patris vel fratris, avi vel avunculi, vel consanguinei sive antecessoris prædicti talis cujus hæres ipse est ut dicit. Et nisi fecerit &c. ut supra.

3. Breve, quod competit

Item si hæres petat dotem alienatam per ipsam uxorem, tunc sic. Et in q̄ prædictus talis non habet

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[1] "vel," MS. Rawl. C. 160. | [2] "in quod," MS. id.

may well be able to claim back such a grant, and the heir of the father will be bound from other sources, to make warranty and compensation, and not the heir of the mother, and for this reason he will have an action after the death of his mother.

## Chapter V.

1. A writ, if dower has been alienated by a second husband.

If by chance a person has had an entry by a second husband into land, which the wife had as dower by the grant of her first husband, then let a writ of this kind issue. The king to the viscount greeting. Enjoin so-and-so that justly, &c., he restore to such an one so much land with its appurtenances in such a vill, which she claims to be her reasonable dower or of her reasonable dower, which she had from the grant of her first husband, and into which so-and-so aforesaid had not an entry except through such an one the second husband, who demised it to him, whom she could not contradict during his lifetime (as she says), and unless he shall do so, &c., as above. And in what way he ought to answer, and the business ought to be terminated, may be sufficiently seen above by an example. f. 323.

2. A writ, if the husband has alienated dower.

If a husband has alienated the dower of his wife, which she had by the grant of another husband, and which after the death of the wife ought to revert to the heirs of the first husband, the heir is aided by the following writ. The king to the viscount greeting. Enjoin so-and-so, that justly &c. he restore to such an one so much land with its appurtenances &c., and into which the said so-and-so has no entry except through such an one, who demised it to him, and who held it as the dower of such an one his wife by the grant of such an one formerly her husband, the father or brother, grandfather or uncle or cousin or ancestor of such an one aforesaid, whose heir he is, as he says. And unless he do so &c. as above.

3. A writ, to which an

Likewise if an heir claims dower which has been alienated by the wife herself, then thus. And into which

hæredi, si uxor dotem alienaverit.

ingressū nisi per talem, quæ fuit uxor talis, quæ illud tenuit in dotem de dono p̃dicti talis quōdā viri sui, patris vel fratris &c. ut supra. Item si vir alienaverit dotem & uxor petat, tunc sic. Quam clamat esse dotem suam, quam habuit de dono talis primi viri sui, & in quam non habet ingressum nisi p̱ talē secundū virum suum, qui illam ei tradidit ad voluntatem suam, cui ipsa contradicere non potuit (ut dicit), & nisi fecerit &c. vel aliter: & in quā non habet ingressum nisi p̱ talem quondam virum suum qui illam ei vendidit, cui ipsa in vita sua contradicere non potuit &c.

4. Item, si uxor dotem alienaverit.

Item si hæres petat quòd uxor dimisit q̱ tenuit nomine dotis, & tunc sic: Et in quam non habuit ingressum nisi p̱ talem, quæ fuit uxor talis avi prædicti talis, cujus hæres ipse est, & ex cujus dono ipsa talis illam tenuit in dotem de hæreditate p̃dicti talis avi ut dicit &c. vel aliter: in quam non habet ingressum nisi per C. cui D. avia ipsius C. (cujus hæres ipse est) illam vendidit, quæ illam tenuit in dotem (ut dicit) &c. vel aliter: Præcipe A. quòd justè &c. reddat B. & C. uxori ejus tantum terræ &c. quam clamat esse jus & hæreditatem ipsius C. & in quam idem A. non habet ingressum nisi per D. quondam uxorem ipsius A. cui C. quōdā uxor E. terrā illam dimisit, quæ non nisi dotem inde habuit ex dono prædicti E. quondam viri sui & avi ipsius C. cujus hæres ipse est, ut idem B. & C. dicunt. Si procurator sicut celerarius vel alius, abbas vel prior sine assensu capituli, vel episcopus, vel capitulum, sine consensu capituli, episcopi,

so-and-so aforesaid has no entry except through such an one, who was the wife of such an one, who held it in dower from the grant of such an one aforesaid formerly her husband, her father or brother &c., as above. Likewise if the husband has alienated the dower and the wife claims it, then thus. Which she claims to be her dower, which she had from the grant of such an one her first husband, and into which so-and-so had no entry except through such an one her second husband who conveyed it to him of his own will, which she could not contradict (as she says), and unless he does, &c.: or otherwise, and into which so-and-so has no entry except through such an one formerly her husband who conveyed it to him, whom she could not contradict during his lifetime, &c.

heir is entitled, if a wife has alienated her dower.

Likewise if an heir claims that the wife has demised what she held in the name of dower, and then thus: and into which he had no entry except through such an one who was the wife of so-and-so the grandfather of such an one aforesaid, whose heir he is, and from whose grant such an one herself held that land in dower of the inheritance of such grandfather aforesaid as he says &c.: or otherwise, and into which he had no entry except through C., to whom D. the grandmother of the said C. (whose heir he is) sold the land, who held it as dower (as he says) &c., or otherwise. Enjoin A. that justly &c. he restore to B. and C. his wife so much land &c., which he claims to be the right and inheritance of the said C., and into which the said A., has no entry except through D. formerly the wife of the said A. to whom C. formerly the wife of E. demised that land, which she only held as dower from the grant of the aforesaid E. formerly her husband and the grandfather of the said C. whose heir he is, as the said B. and C. say. If an agent such as a steward or other, an abbot or prior without the assent of the chapter, or a bishop or a chapter without the consent of the chapter or of the bishop, or of another person

4. Likewise if a wife has alienated her dower.

vel alius cujus assensus fuerit necessarius, dimiserit sine assensu, tunc si abbas dimiserit, fiat tale breve.

5. Breve, si per abbatem sine assensu capituli.

Rex vicecomiti salutem. Præcipe tali, quòd justè &c. reddat tali abbati tantum terre cum pertinentiis in tali villa, quod clamat esse jus ecclesiæ suæ, & in quod idem talis non habet ingressum nisi per talem, quondam abbatem de tali loco, qui illud ei dimisit sine assensu capituli sui ut dicit &c. Et nisi fecerit &c.

6. Breve, si celerarius vel procurator.

Rex vicecomiti salutem. Precipe tali, quòd juste &c. reddat tali abbati, tantum terræ cum pertinentiis in tali villa, quod clamat esse jus ecclesiæ sue, & in quod prædictus talis non habet ingressum nisi per celerarium vel per procuratorem domus ipsius abbatis de tali loco, qui illud ei dimisit sine assensu ipsius abbatis (ut dicit), & nisi fecerit &c. Eadem forma erit, si canonicus dimiserit sine assensu episcopi. Item
f. 323 b. si uxor dimiserit sine assensu & voluntate viri, tunc sic: Quam clamat esse jus & hæreditatem suam, vel jus & maritagium ipsius mulieris, vel quam clamat esse rationabilem dotem suam, vel de rationabili dote ipsius mulieris, quam habuit de dono talis quondam viri sui: & in quam prædictus talis non habet ingressum, nisi per p̃dictam talem mulierem, quæ illud ei dimisit sine assensu & voluntate prædicti talis quondam viri sui (ut dicit), et nisi fecerit &c. Item si ballivus dimiserit sine volūtate domini sui, tunc sic. Et in quam idem talis non habet ingressum, nisi per talem quondam ballivum suum de tali villa, qui illam ei dimisit sine voluntate ipsius talis, ut dicit: & nisi fecerit &c. Item si per ballivum domini regis dum aliquis fuerit in prisona domini regis, tunc sic.

7. Breve, si per ballivum contra

Rex vicecomiti salutem. Præcipe tali quòd juste &c. reddat tali tantum terræ cum pertinentiis in tali villa, quod clamat esse jus & hæreditatem suam, & in quod

whose assent has been necessary, has demised without that assent, then if the abbot has demised, let a writ issue of this kind.

5. A writ if by an abbot without the assent of the chapter.

The king to the viscount greeting. Enjoin so-and-so that he justly &c. restore to such an abbot so much land with its appurtenances in such a vill, which he claims to be the right of his church, and into which so-and-so aforesaid has no entry except through so-and-so, formerly abbot of such a place, who demised it to him without the assent of his chapter, as he says &c. and unless he do so &c.

6. A writ, if a steward or an agent.

The king to the viscount greeting. Enjoin so-and-so that justly &c. he restore to such an abbot, so much land with its appurtenances in such a vill, which he claims to be the right of his church, and into which so-and-so aforesaid has no entry except through the steward or through the agent of the house of the said abbot of such a place, who has demised it to him without the assent of the said abbot (as he says), and unless he do so &c. The same form shall be used, if a canon has demised without the assent of the bishop. Likewise if a wife has demised without the assent of her husband, then thus : which he claims to be his right and his inheritance, or his right and the marriage portion of his wife, or which he claims to be her reasonable dower, or of the reasonable dower of his wife, which she had from the grant of so-and-so her former husband, and into which such an one aforesaid had no entry except through the aforesaid woman, without the assent and will of her former husband aforesaid (as he says), and unless he do so &c. Likewise if though the bailiff of the lord the king, whilst some one was in the prison of the lord the king, then thus. f. 324b.

A writ, if through a bailiff

The king to the viscount greeting. Enjoin such an one that justly &c. he restore to so-and-so, so much land with its appurtenances in such a vill, which he claims to

voluntatem domini.

prædictus talis non habet ingressum nisi per talem quondam ballivum nostrum, qui illud ei dimisit, dum idem talis fuit in prisona nostra, & terra sua in manu nostra &c., ut dicit, et nisi fecerit &c. Item si quis per eum qui feloniam fecerit, et tunc si post feloniam factam convictus sit, competit domino suo de quo tenuit tale breve ad recuperandam eschaetam suam.

8. Breve, si felo alienaverit post feloniam factam.

Rex vicecomiti salutem. Præcipe A. quòd juste &c. reddat B. tantum terræ cum pertinentiis &c., in quam idem A. non habet ingressum nisi per C. de N. qui eandem terram tenuit de prædicto B. et quæ terra esse debet eschaeta ipsius B. propter feloniam, de qua idem B. in curia nostra coram nobis vel justiciariis nostris talibus convictus fuit et damnatus, et quam terram idem C. dimisit prædictæ A. postquàm fecerat prædictam feloniam, ut idem B. dicit, et nisi fecerit &c. ut supra. Item si per eum qui tenuerit in villenagio habuit quis ingressum, tunc consulitur domino per tale breve.

9. Breve, si villanus alienaverit id quod tenuerit in villenagio.

Rex vicecomiti salutem. Præcipe tali &c. quòd reddat tali tantum terræ cum pertinentiis in tali villa, in quod prædictus talis non habet ingressum nisi per talem, qui illud tenuit de prædicto tali in villenagio, ut dicit &c., et nisi fecerit, summoneas &c. ut supra. Item si quis per eum ingressum habuerit, qui non fuerit compos sui, nec sanæ mentis, et tunc sic.

10. Breve, si per eum, qui non fuit sanæ mentis.

Rex vicecomiti salutem. Præcipe tali, quòd juste &c. et in quod idem talis non habet ingressum nisi per talem patrem, vel alium antecessorem prædicti talis, cujus hæres ipse est, qui illud ei dimisit dum non fuit compos mentis suæ, vel dum non fuit compos sui, nec sanæ mentis (ut dicit). Et nisi fecerit &c. ut supra. Item si quis per eum qui non tenuerit nisi

be his right and inheritance, and into which such an one aforesaid has no entry except through such an one formerly our bailiff, who demised it to him, whilst so-and-so was in our prison, and his land was in our hand &c., as he says. And unless he do so &c. Likewise if any one through him, who has committed a felony and then has been convicted after the commission of the felony, his lord from whom he held is entitled to such a writ to recover his escheat. against the will of his lord.

8. A writ, if a felon has alienated after the commission of the felony.

The king to the viscount greeting. Enjoin A. that justly &c. he restore to B. so much land with its appurtenances &c., into which the said A. has no entry except through C. de N., who held the same land from the aforesaid B., and which land ought to be an escheat of the said B. on account of a felony, of which the said B. was convicted and condemned in our court before us or our justiciaries, and which land the said C. demised to the aforesaid A. after he had committed the said felony, as the said B. says, and unless he do so &c. as above. Likewise if a person has an entry through him who held in villenage, then the lord is aided through a writ of this kind.

9. A writ, if a villein has alienated what he held in villenage.

The king to the viscount greeting. Enjoin so-and-so, &c. that he restore to such an one so much land with its appurtenances in such a vill, into which so-and-so aforesaid has no entry except through such an one, who held it from such an one aforesaid in villenage, as he says &c., and unless he do so, summon &c. as above. Likewise if a person has an entry through him, who was not in possession of his faculties, nor of sound mind, and then thus.

10. A writ, if through him, who was not of sound mind.

The king to the viscount greeting. Enjoin so-and-so that justly &c., and into which the said so-and-so had no entry except through such a father or another ancestor of the said so-and-so, whose heir he is, who demised it to him when he was not in possession of his faculties, nor of sound mind (as he says). And unless he do so &c. as above. Likewise if anyone (had entry) through

ad vitam suam quacunque ratione, sive nomine dotis, sive per legem Angliæ, sive per finem factum, et tunc sic.

11. De ingressu per eum, qui non tenuit nisi ad vitam quacunque ratione, et cum post mortem reverti debet.

Rex vicecomiti salutem. Præcipe tali, quòd juste &c. et in quam idem talis non habet ingressum, nisi per talem, post mortem cujus prædicta terra reverti debeat ad prædictum talem, per finem factum in curia domini regis Johannis[1] regis patris nostri, vel in curia nostra coram justiciariis nostris, apud talem locum, inter talem patrem prædicti talis (cujus hęres ipse est) petentem, et p̃dictū talem tenentem de tanto terræ cū ptinentiis in tali villa: vel sic: In quam idem talis non habet ingressū nisi p talē, qui terrā illam tenuit ad vitam suam p finē factū in curia nostra &c. inter ipsū talem petentē, et p̃dictum talem tenentē, per quē finem eadē terra reverti debuit ad p̃dictum talem petentem, post mortē ipsius tenētis (ut dicit), & unde queritur quòd ipse talis injustè ei deforceat, & nisi fecerit &c. ut supra. Si quis autem per intrusionem fuerit in seysina, et ille qui jus habet petat versus eum, tunc fiat ei breve in hac forma.

f. 324.

12. De ingressu per intrusionem.

Rex vicecomiti salutē. Præcípe A. q juste &c. reddat B. tantum terræ &c. quem idem B. clamat ut jus suum versus eum ex dono C. patris ipsius A. (cujus hæres ipse est), et in quam idem A. non habet ingressum nisi per hoc, q ipse se intrusit in terram illā post mortē D. matris ipsius A. q̃ terram illam recuperavit ut dotē suam versus p̃dictum B. in curia nostra coram &c. per judicium ejusdem curiæ nostræ, et q̃m injuste ei deforciat: et nisi fecerit &c. Tunc summoneas &c. vel aliter: quam B. clamat esse jus suum de dono C.

[1] "in curia domini Johannis," MS. Rawl. C. 160.

him who held it only for his life in some way or other, whether in the name of dower, or by the law of England, or through a fine levied, and then thus.

11. Of entry through him, who did not hold except for life in some way or other, and when it ought revert after his death. f. 324.

The king to the viscount greeting. Enjoin so-and-so, that justly &c., and into which so-and-so aforesaid had no entry except through such an one, after whose death the aforesaid land ought to revert to such an one aforesaid, after a fine made in the court of the lord the king John our father, or in our court before our justiciaries at such a place, between so-and-so the father of such an one aforesaid (whose heir he is), the claimant, and so-and-so aforesaid the tenant of so much land with its appurtenances in such a vill; or thus, into which so-and-so aforesaid had no entry except through such an one, who held that land for his life by a fine levied in our court &c. between the said party himself the claimant and so-and-so aforesaid the tenant, according to which fine the said land ought to revert to the said claimant after the death of the tenant, as he says, and wherefore he complains that so-and-so aforesaid unjustly excludes him by force; and unless he do so &c. as above. But if anybody has been in seysine through intrusion, and he who has the right claims against him, then let a writ issue in this form.

12. Of entry by intrusion.

The king to the viscount greeting. Enjoin A. that justly &c. he restore to B. so much land &c. which the said B. claims as his right against him from the grant of C. the father of the said A. (whose heir he is), and into which the said A. had no entry except through these means, that he intruded himself into that land after the death of D. the mother of the said A. who had recovered that land as her dower against the aforesaid B. in our court before &c. by a judgment of our said court, and who unjustly excludes him by force, and unless he do so &c., then summon &c.: or otherwise: which B. claims to be his right by a grant from C. his father, and into

patris sui, & in quam non habet ingressum, nisi per intrusionem, quam fecit in terram illam post mortem ipsius C. qui terram illam habuit in custodia ad opus ipsius B. dum infra ætatem fuit, ut dicit: vel aliter: Præcipe A. q̃ justè &c. reddat B. & C. uxori ejus tantam terram &c. quam idem A. dedit in maritagium p̃dicto B. cum p̃dicta C. filia sua, & in quam idem A. non habet ingressum post donum illud nisi per intrusionem, quam in eam fecit post mortem D. patris ipsius B., qui terram illam habuit in custodia ad opus p̃dictorum B. et C. uxoris suæ de voluntate & assensu ipsius D. qui fuit eorum custos, per assignationem et voluntatem ipsius A. (ut ipsi B. et C. dicunt). Item si vir alicujus uxoris vendiderit hæreditatem alicujus pueri uxoris suæ, q̃ fuerit in custodia ipsorum: et tunc sic.

13. De ingressu per custodiam.

Rex vicecomiti salutem. Præcipe A. quòd juste &c. reddat B., qui plenæ ætatis est (ut dicitur), tantum terræ cum pertinentiis in tali villa, quod clamat esse jus et hæreditatem suam, et in quod p̃dictus A. non habet ingressum nisi per C., qui non nisi custodiam inde habuit, dum idem B. infra ætatem et in custodia sua fuit (ut dicit): et nisi fecerit &c. ut supra.

14. De ingressu per maritum.

Rex vicecomiti salutem. Præcipe A. quòd juste et sine dilatione reddat B. &c., et in quam idem A. non habet ingressum nisi per C. quondam virum matris ipsius B. (cujus hæres ipse est), qui illam ei vendidit ut dicit &c. Item si quis dederit dum hæres fuerit infra ætatem & in custodia sua, et hæres petat de seysina sua propria, tunc fiat breve in hac forma.

15. Si hæres peteret de seysina

Si autem aliquis hæres petat de seysina antecessorum suorum aliquam terram, quam custos eorum alienaverit dum fuerit infra ætatem, et in custodia sua, tunc fiat

which he has no entry, except by an intrusion, which he has made into that land since the death of the said C., who held that land in his custody for the benefit of the said B. whilst he was under age, as he says: or otherwise: Enjoin A. that he justly &c. restore to B. and C. his wife so much land &c., which the said A. gave as a marriage portion to the aforesaid B. together with C. his daughter, and into which the said A. has no entry after that grant except by an intrusion, which he made after the death of D. the father of the said B. who had that land in his custody for the benefit of the aforesaid B. and C. his wife with the will and assent of the said D., who was their guardian by the assignment and will of the said A. (as B. and C. say). Likewise if the husband of any wife has sold the inheritance of any male child of his said wife, which had been in the custody of them both: and then thus:

13. Of entry through a guardian.

The king to the viscount greeting. Enjoin A. that justly &c. he restore to B. who is of full age (as it is said) so much land with its appurtenances in such a vill, which he claims to be his right and his inheritance, and into which the said A. had no entry except through C., who had only the custody thereof, whilst B. was under age and in his guardianship (as he says): and unless he do so &c. as above.

14. Of entry through a husband.

The king to the viscount greeting. Enjoin A. that he justly and without delay restore to B. &c., and into which the said A. has no entry except through C. formerly the husband of the mother of the said B. (whose heir he is), who sold it to him as he says &c. Likewise if a person has granted it, whilst the heir was under age and under his guardianship, and the heir claims of his own seysine, then let the writ issue in this form.

15. If the heir claims from the

But if any heir claims from the seysine of his ancestors a certain land, which their guardian has alienated, whilst they were under age and under his guardianship, then

antecessoris, dum fuerit infra ætatem.

breve in hac forma. Præcipe &c. ut supra: quod clamat esse jus et hæreditatem suam, et in quod idem A. non habet ingressum nisi per C., qui non nisi custodiam inde habuit dum talis pater vel mater, frater vel soror, avus vel avia, avunculus vel amita, consanguineus vel consanguinea, sive antecessor ipsius B. (cujus hæres ipse est) infra ætatem et in custodia sua fuit, ut dicit &c.: et nisi &c.

f. 324 b. 16. Item, dum fuerit infra ætatem.

Vel aliter: & in quam non habet ingressum nisi per C. cujus pater vel alius antecessor terram illam habuit in custodia cum ipso B., dum idem B. fuit infra ætatem: modo[1] habet ętatem (ut dicitur). Et unde idem talis pater vel alius antecessor obiit seysitus de terra illa ratione custodiæ ipsius B.: & nisi fecerit &c.

17. Item, dum in custodia.

Vel aliter: In quam idem A. non habet ingressum nisi per C. qui terram illam ei dimisit, dum terra illa fuit in custodia ipsius C. per præceptum nostrum, & nisi fecerit &c.: vel aliter: Præcipe A. quòd juste &c. reddat B. (qui plenæ ætatis est) tantam terram &c., quam clamat esse jus & hæreditatem suam, & in quam non habet ingressum nisi ratione custodiæ, eo quòd prædicta terra est de feodo ipsius A.: & nisi fecerit &c.

18. Item, dum fuerit infra ætatem et modo habet ętatem.

Vel sic: Et in quam non habet ingressum nisi per C., cujus pater terram illam habuit in custodia cum ipso B. dum idem B. fuerit infra ætatem, & modo habet ætatem. Et unde idem pater talis obiit seysitus de terra illa, ratione custodiæ ipsius B.: et nisi fecerit &c.

19. Dum maneret de familia sua.

Vel aliter: In quam idem A. non habet ingressum nisi per C. dum idem B. fuit in custodia sua, & idem A. terram illam ei dimisit, dum remaneret de familia

[1] "et modo," MS. Rawl. C. 160.

let the writ be in this form. Enjoin so-and-so &c. as above, which he claims to be his right and inheritance, and into which the said A. has no entry except through C. who had only the guardianship thereof, whilst his said father or mother, grandfather or grandmother, uncle or aunt, cousin-male or cousin-female, or the ancestor of the said B. (whose heir he is) was under age and under his guardianship, as he says &c.: and unless &c. seysine of his ancestor, whilst he was under age.

Or otherwise; and into which he had no entry except through C., whose father or other ancestor held that land in his custody together with B. himself, whilst the said B. was under age, and lately he is of age (as it is said), and whence his said father or other ancestor died seysed of that land by reason of his guardianship of the said B.: and unless he do so &c. f. 324 b. 16. Likewise whilst he was under age.

Or otherwise: into which the said A. has no entry except through C. who demised that land to him, whilst that land was in the custody of the said C. through our precept, and unless he do so &c. Or otherwise: Enjoin A. that justly &c. he restore to B. (who is of full age) so much land &c., which he claims to be his right and inheritance, and into which he has no entry except by reason of his guardianship, inasmuch as the aforesaid land is of the fee of the said A.: and unless he do so &c. 17. Likewise whilst under guardianship.

Or thus: and into which he has no entry except through C., whose father held that land in his custody together with the said B. whilst the said B. was under age, and he has lately come of age. And whence the said father of so-and-so died seysed of that land, by reason of his guardianship of the said B., and unless he do so &c. 18. Likewise whilst he was under age, and has only lately come of age.

Or otherwise: into which the said A. had no entry except through C. whilst the said B. was under his guardianship, and the said A. demised the land to him whilst B. remained a member of the family of said C., 19. Whilst he remained a member of his family.

ipsius C., & modo non est de familia ipsius C. ut idem B. dicit: et nisi fecerit &c. Eodem modo de communia pasturæ, si fuerit alienata et dimissa ad terminum qui præteriit. Et tunc fiat tale breve, dum tamen pastura fuerit certa et designata ad certum numerum averiorum.

20. Breve de pastura data ad terminum, qui præteriit.

Rex vicecomiti salutem. Præcipe A. quòd juste &c. reddat B. communiam pasturę ad tot boves, et tot oves (et sic deinceps) in tali villa, quam clamat esse jus suum, ut pertinentem ad liberum tenementum suum in tali villa, in quam idem A. non habet ingressum, nisi per C. (cujus hæres idem B. est), qui pasturam illam ei dimisit ad terminum qui præteriit, ut dicit: et nisi fecerit &c.

## Cap. VI.

1. De diversitate juratarum secundum diversitatem brevium.

Cum petens se posuerit in inquisitionem & juratam de intentione probanda, et tenens similiter de responsione et exceptione, tunc fiant jurate secundum formam et diversitatem brevium in hac forma.

2. Si partes posuerint se in juratam secundum diversitatem brevium.

Si autem per virum cui uxor contradicere non potuit, tunc sic: ad recognoscendum super sacramentum suum, si prædictus talis tenens aliud jus vel alium ingressum habuit, vel simpliciter alium ingressum, in tantam terram cum pertinentiis in tali villa, quam prædicta talis clamat ut jus suum, vel ut jus et hæreditatem suam, vel ut jus et maritagium suum, vel ut dotem suam, quam habuit de dono talis primi viri sui versus talem, quam per talem quondam virum suum vel secundum virum suum secundum formam brevis de
f. 325. ingressu, et cui in vita sua contradicere non potuit, vel si ingressum habuit in prædictā talem terram per prædictum talem petentem qui terram illam ei dedit vel vendidit, antequàm prædictus talis vir suus eam desponsasset, vel post mortē talis viri sui in ligea

and he has lately ceased to be a member of his family, as B. says: and unless he do so &c. In the same way concerning common of pasture, if it has been alienated and demised for a term which has passed. And then let such a writ issue, provided however that the pasture be certain and designed for a certain number of cattle.

20. A writ for pasture granted for a term, which has passed.

The king to the viscount greeting. Enjoin A. that justly &c. he restore to B. common of pasture for so many beeves, and so many sheep (and so in succession) in such a vill, into which the said A. has no entry except through C. (whose heir the said B. is), who has demised that pasture to him for a term which has passed, as he says: and unless he do so &c.

## Chapter VI.

1. Of the diversity of juries according to the diversity of writs.

When a claimant has put himself upon an inquest and a jury to prove his demand, and the tenant has put himself in a similar manner to prove his answer and exception, then let the juries be constituted according to the form and diversity of the writs in this form.

2. If the parties have put themselves on a jury according to the diversity of the writs.

But if through the husband, whom his wife could not contradict, then thus: to recognise upon their oath, if so-and-so aforesaid has had any other right or any other entry, or simply another entry, into so much land with its appurtenances in such a vill, which so-and-so aforesaid claims as her right, or as her right and inheritance, or as her right and her marriage portion, or as her dower, which she had by gift from so-and-so her first husband, against so-and-so, or which she had through so-and-so formerly her husband, or her second husband according to the form of the writ of entry, and whom she could not contradict during his life, or if he had an entry into f. 325. such land aforesaid through so-and-so aforesaid the claimant, who granted or sold that land to her before her said husband espoused her, or after the death of her said husband in the full widowhood of his said wife,

viduitate ipsius uxoris, quæ terram illam ei dedit vel vendidit &c. Et semper cùm modus & forma ingressus dedicta sit, oportebit semper formare formam inquisitionis distinctè secundum responsionem tenentis, qui dedicit ingressum, excipiendo & respõdendo, quòd alium habeat ingressum quàm petens proponat, vel diversum, & per alium. Item si alio modo uxor alienaverit rem viri sui, vel rem ꝑpriam sine consensu viri sui, tunc sic: Ad recognoscendum super sacramentum &c. si prædictus talis tenens aliud jus vel alium ingressum habuerit in tantam terram cum pertinentiis in tali villa, quam talis clamat ut jus suum, si terra fuerit propria, vel quam talis & uxor ejus clamāt esse jus uxoris suæ, vel in dotem uxoris suæ, vel de rationabili dote secundum formam brevis de ingressu, & quam prædicta talis uxor ei dimisit sine assensu viri sui, ut idem petens dicit, vel si prædictus talis tenens ingressum habuit in terram illam per prædictum virum, qui terram illam ei vendidit vel dedit, per prædictam uxorem ante desponsationem vel post, ut supra, sicut idem tenens dicit.

3. Jurata sine assensu episcopi, vel prioris, vel abbatis.

Item si sine assensu episcopi, abbatis, vel prioris, per capitulum fiat alienatio, vel per canonicum sine assensu capituli, vel per obedientiarium, vel procuratorem sine consensu abbatis vel prioris, vel per ballivum sine assensu domini, vel per ballivum, dum quis fuerit in prisona, tunc semper fiat una pars juratæ secundum formam brevis, & disjuncta secundum responsionem tenentis, & omni casu in brevibus de ingressu singularibus, ut si per illum qui tenuerit in villenagio. Item per aliquem dum non fuit sanæ mentis. Item si per eum qui non tenuerit nisi ad vitam. Item per felonem post feloniam factam. Item

Britton, V. ch. xiv. § 7.

who granted or sold that land to him, &c. And always when the mode and form of the entry has been denied, it will be requisite to shape the form of the inquest distinctly according to the answer of the tenant, who denies the entry, by excepting and answering, that he had another entry than that which the claimant propounds, or a diverse entry and through another person. Also if the woman has in a different manner alienated the estate of her husband, or her own estate without the consent of her husband, then thus: to recognise upon their oath, &c. if so-and-so the tenant aforesaid had any other right or any other entry into so much land with its appurtenances in such a vill, which so-and-so claims as his right, if the land be his own, or which so-and-so and his wife claim to be the right of his wife, or as the dower of his wife, or of her reasonable dower according to the form of the writ of entry, and which the wife aforesaid demised to him without the assent of her husband, as the said claimant says, or if such tenant aforesaid had an entry into that land through the aforesaid husband, who sold or granted the land to him, or through the aforesaid wife before her espousals or after them, as above, as the said tenant says.

3. A jury without the assent of the bishop, or of the prior, or of the abbot.

Likewise if an alienation has been made without the assent of the bishop or of the abbot or of the prior, or through a canon without the assent of the chapter, or through an obedientiary or a steward without the consent of the abbot or prior, or through a bailiff without the assent of the lord, or through a bailiff whilst one was in prison, then let one part of the jury be constituted according to the form of the writ, and the remainder according to the answer of the tenant, and in every case in single writs of entry, as if through him who held in villenage. Likewise through some one when he was not of sound mind. Likewise through him who did not hold except for his life. Likewise through a felon after his commission of felony. Likewise if an entry

si ingressus simpliciter proponatur & simplicitur dedicatur absque eo quòd aliquid excipiatur cõtra ingressum, tunc sic: Ad recognoscendum &c. si A. pater B. aliud jus vel alium ingressum habuit in tantam terram cum pertinentiis &c. nisi per C. custodem D. fratris E. scilicet qui petit, cujus hæres ipse E. est, dum idem D. fuit infra ætatem, & in custodia prædicti C. cum terra sua & aliis terris suis, quia tam prædictus B. filius & hæres prædicti A., cui F. de N. warrantizavit prædictam terram, & versus quem B. idem E. in eadem curia nostra clamavit terram illam ut jus suum, quam prædictus E. frater & hæres prædicti D. posuerunt se inde in juratam illam, & interim, &c. & se interim ita inde certificent quòd præfatos justiciarios nostros inde reddant certiores. Teste &c.

4. Item super intrusionem.

Item si per intrusionem, tunc sic: Ad recognoscendum super sacramentum suum, si A. pater B. die quo obiit fuit seysitus ut de feodo de tanta terra cum pertinentiis in tali villa, quam C. in curia nostra &c. clamat ut jus suum versus prædictum B., vel si idem B. alium ingressum non habuit in terram illam cum pertinentiis, quàm per hoc quòd se intrusit in terram illam post mortem prædicti A. patris sui, cui prædictus C. terram illam dimisit ad terminum qui præteriit (ut dicitur), quia tam prædictus &c. Et hæc exempli causa sufficiant, quia infiniti sunt ingressus, & formæ brevium infinitæ, & variantur formæ inquisitionum multipliciter, & sæpiùs secundum varietatem brevium, & responsionum: de quibus omnibus (cùm sint infinita) mentio fieri non poterit.

f. 325 b.

5. Item breve si per uxorem quæ non

Item si uxor alienaverit dotem, & dicatur in brevi de ingressu: Et in quam talis non habet ingressum nisi per talem, quæ fuit uxor talis, qui terram illam

be simply propounded and simply denied without any exception being raised against the entry, then thus: to recognise, &c., if A. the father of B. had any other right or any other entry into so much land with its appurtenances, &c., except through C. the guardian of D. the brother of E., to wit, the claimant, whose heir E. is, while the said D. was under age and in the guardianship of the said C. with his land and other lands of his, because the aforesaid B. the son and heir of the aforesaid A. to whom F. de N. warranted the aforesaid land, and against which B. the said E. in our same court claimed that land as his right, as well as the aforesaid E. the brother and heir of the aforesaid D. have placed themselves thereupon on that jury, and in the meanwhile, &c., and let them certify themselves thereon in the mean time, so that they may render our aforesaid justiciaries more certain thereof. Witness, &c.

4. Likewise upon an intrusion.

Likewise if through an intrusion, then thus: to recognise upon their oath, if A. the father of B. on the day on which he died was seysed as of fee of so much land with its appurtenances in such a vill, which C. in our court, &c., claims as his right against the aforesaid B., or if the said B. had not any other entry into that land with its appurtenances than by intruding himself into that land after the death of the aforesaid A. his father, to whom the aforesaid C. demised that land for a term which has passed (as is said), because as well the aforesaid, &c. And these are sufficient for example's sake, because entries are infinite, and the forms of writs infinite, and the forms of inquests are varied in manifold ways, and repeatedly according to the variety of writs and answers; concerning all of which (since they are infinite) mention cannot be made. f. 325 b.

5. Likewise, if through a wife who

Likewise if a wife has alienated her dower, and it is said in the writ of entry, and into which so-and-so has no entry except through such an one, who was the wife

nisi dotem &c.

ei dimisit, & quæ non nisi dotem inde habuerit, de dono talis quondam viri sui, post cujus mortem terra illa reverti debet ad talem sicut ad warantum de dote sua, si tenens ingressum illum per talem defendat, & dicat quòd nullum habuerit ingressum per prædictam uxorem, sed per talem antecessorem ipsius petentis (cujus hæres ipse est), qui terram ei dedit per chartam suam quam profert, & quæ hoc testatur: si ex parte adversa replicetur, q charta valere non debeat eo quòd facta fuit dum donator non fuit compos mentis suæ, tunc fiat ut supra, quia cognoscit quodāmodo chartam & donum, licet invalidum, & de jure irritandum. Item si charta omninò dedicatur, vel dicatur quòd omninò valere non debeat, quià ille qui donasse debuit nullam omninò inde seysinam habuit, tunc petens ꝑbet dictum suum si possit. Sed simplici voci suæ non erit credendum, nisi sufficientem habeat probationē, nisi ita sit quòd credendū sit ei & simplici voci suæ in causæ cognitione. Et in quo casu, tenens se ponet in juratam per hæc verba. Sed videndum erit utrum ille qui dedit hæres fuit, & warrantus de dote mulieris, vel extranea persona: quòd si non, non valeret donatio: sed si sic, valere poterit. Poterit enim hæres dare id quod suum est, scilicet proprietatem, jus & feodum, & attornare donatorio servitium, ita quòd uxor tenens quoad vixerit habeat liberum tenementum. Et si uxor tenens dum vixerit se dimiserit, & donatorio suo seysinam reddiderit, non habet propter hoc donatorius ingressum per uxorem sed per hæredem, quod secùs esset, si tantū per uxorem. Ideo dicatur: Ad recognoscendum si prædictus A. pater B. aliud jus vel alium

of such an one, who demised that land to her, and who had only her dower thereof by the grant of such an one formerly her husband, after whose death that land ought to revert to so-and-so as to the warrantor of her dower, if the tenant contests that entry through so-and-so, and says that he had no entry through the aforesaid wife, but through such an ancestor of the claimants (whose heir he is), who granted him that land through his charter, which he produces, and which attests this: if on the opposite side it be replied, that the charter ought not avail, inasmuch as it was made when the grantor was not in possession of his faculties, then let it be done as above, because he acknowledges in a certain manner the charter and the grant, although it be invalid and is of right to be declared void. Likewise if the charter be altogether denied, or it be said that it ought not to avail at all, because he who should have granted it, had no seysine thereof at all, then let the claimant prove his own assertion, if he can. But credit is not to be given to his simple assertion, unless he has a sufficient proof, except it be that credit is to be given to him and to his simple assertion in the cognisance of the cause; and in which case the tenant shall put himself upon a jury in these words. But it will have to be seen, whether he who granted it was the heir and the warrantor of the dower of the wife, or an extraneous person, because if not, the grant would not avail, but if so, it may be valid. For the heir may grant what is his own, that is the property, the right, and the fee, and may attourn to the donatory a service, so that the wife the tenant may have a free tenement as long as she lives. And if the wife as tenant during her lifetime has demised herself and has restored seysine to her donatory, the donatory has not on that account an entry through the wife, but through the heir, which would be otherwise, if only through the wife. Therefore let it be said: to recognise, if the aforesaid A. the father of B. had any other right or any other

had only her dower.

ingressum habuit in prædictam terram, quâm per prædictam C. quæ terram illam tenuit in dotem, de dono prædicti D. quondam viri sui (cujus heres ipse est), scilicet qui petit, sicut idem E. dicit, vel si ingressum habuerit in terram illam per prædictum B. qui terram illam ei dedit per chartam suam, & inde eam posuit in seysinam ita quòd attornavit eidem A. servitium C. de prædicta terra ut idem B. dicit, & interim &c. : et hoc sufficiat de inquisitione ad præsens.

## Cap. VII.

1. Si jurata summonenda est coram justiciariis.

Si autē aliqua jurata sum̄onenda sit corā justic. vel corā ipso rege, quæ aliquādo fuit coram iv. justic. assignatis, tunc fiat tale breve. Rex vic. salutē, p̃cipimus tibi q̄ juratam quæ sum̄onita fuit coram dilectis & fidelibus nostris &c. in adventu ipsorū in partes illas inter tales de tanta terra cū p̃tinentiis in tali villa, & quæ jurata nondū capta est (ut idem talis recordatur), venire facias coram justiciariis nostris &c. in eodem statu quo sum̄onita fuit coram præfatis talibus, & habeas &c. Et in quo casu, si recognitores non venerint, tunc fiat tale breve. Præcipimus tibi, quòd habeas coram &c. ad talem terminū corpora A. B. & C. recognitorū juratæ sūm̄onitæ in curia nostra, &c. inter tales de tanto terræ &c. ad faciendam juratā illam, vel ad faciendam juratā illam cum aliis ad hoc electis. Præcipimus etiā tibi, quòd loco talis unius electorum qui obiit, vel qui amotus est, ponas aliū militem, & illum habeas ad p̃fatum terminū ad faciendam juratā illam simul &c.: vel sic: p̃cipimus tibi q̄ in jurata quæ sum̄onita est &c. inter tales de tali re

f. 326.

entry into the aforesaid land than through the aforesaid C. who had that land in dower, of the grant of the aforesaid D. formerly her husband (whose heir he is), to wit who claims, as the said E. says, or if he had an entry into that land through the aforesaid B. who granted that land to her by his charter, and placed her into seysine thereof in such a manner, that he attourned to the said A. the service of the aforesaid C. concerning the aforesaid land as the said B. says, and meanwhile, &c.: and let this suffice concerning the inquest for the present.

## Chapter VII.

1. If a jury is to be summoned before the justiciaries.

But if a jury is to be summoned before the justiciaries or before the king himself, which was sometime summoned before four justiciaries assigned, then let such a writ issue. The king to the viscount greeting. We enjoin you, that you cause to come before our justiciaries the jury which was summoned before our beloved and faithful &c. upon their coming into those parts between such persons concerning so much land with its appurtenances in such a vill, and which jury has not yet been held (as the said so-and-so records) &c., in the same state in f. 326. which it was summoned before the aforesaid so-and-so, and have with you &c. And in which case, if recognisors have not come, then let a writ of this kind issue. We enjoin you that you have before &c. at such a term the bodies of A. B. and C., recognisors of the jury summoned in our court &c. between so-and-so, concerning so much land &c., to make up that jury, or to make up a jury with others chosen for that purpose. We enjoin you that in the place of so-and-so one of those chosen who has died, or who has been struck off, you place another knight, and have him present at the aforesaid term to make up that jury together with &c.: or thus, we enjoin you that on the jury which has been summoned &c. between certain persons on a certain subject &c. you

&c. ponas sex liberos & legales homines, alios à p̃electis ad præelectos, & qui non sunt essoniabiles, & eos habeas corā &c. ita q̃ jurata illa non remaneat p̃ defectu recognitorū &c. qui interim tenementa illa videant &c.

## Cap. VIII.

1. De brevibus, si firmarius petierit seysinam propriam.

Item: Inter cætera in fine notandum, q̃ cùm aliquis firmarius petierit seysinam p̃priam, hoc facere possit, etsi non habuerit jus in re sive in tenem̃to, & illud alicui dimiserit ad terminū qui p̃teriit, quia quodam̄odo jus habet possessoriū quale quale, quare cōpetat ei actio de dimissione p̃pria & facto p̃prio. Quod si in feodo, tunc expirat sua actio, & tunc incipit cōpetere p̃prietario, vel de nova disseysina vel de ingressu, vel de mero jure per breve de recto, secundum q̃ tenuerit ad vitam quocunq̃ modo, ut de libero tenemento tantū, vel in feodo sibi & hæredibus suis, sine usu & expl̃etiis tantū, vel cum usu & expletiis ut de jure mero. Si autem ille dimiserit, qui tantum tenuit ad terminum vitæ, & de seysina propria petierit ingressum, ubi alius habuerit p̃prietatem, feodū scilicet & jus merum, tale breve nunquā vertetur per narrationē in breve de recto. Eodē modo, si quis petierit per ingressum tenementū q̃ dimisit ad terminū, & q̃ tenuit tantū in feodo sine usu & expletiis, nunquā vertetur tale breve de ingressu per narrationem in breve de recto.

2. Qualia brevia non vertuntur ad brevia

Si autē petierit de seysina p̃pria q̃ tenuit ut liberū tenemētum & in feodo cum usu & expletiis, & sic de jure mero, tunc cōpetere poterunt petenti duæ actiones,

place six free and loyal men, different from those previously chosen, in addition to those previously chosen, and who are not essoinable, and have them present before &c., so that the said jury shall not be stayed for default of recognisors &c., who may in the meantime view those tenements.

## Chapter VIII.

Likewise, amongst other things it is to be noted that, when a termor has claimed his proper seysine, he may do this, although he has no right in the estate, or in the tenement, and has demised it for a term, which has passed, because in a certain manner he has a possessory right of some kind or other, wherefore he is entitled to an action concerning his own demise and his own act. But if it be in fee, then this action expires, and then the proprietor begins to be entitled, either concerning novel disseysine, or concerning entry, or concerning the mere right through a writ of right, according as he has held for life in some manner or other, as concerning the freehold only, or in fee for himself and his heirs without the use and profits, or with the use and profits as of mere right. But if he has demised it, who only held it for the term of his life, and he claims an entry in virtue of his proper seysine, where another has the property, to wit, the fee and the absolute right, such a writ will never be turned through the pleadings into a writ of right. In the same manner, if any one has claimed through an entry a tenement which he has demised for a term, and which he has held only in fee without the use and profits, such a writ of entry will never be turned through the pleadings into a writ of right.

1. Of writs. If a termor has claimed his proper seysine.

But if he has claimed of his proper seysine what he has held as a freehold and in fee with the use and profits, and so of absolute right, then the claimant is entitled to two actions, and he may employ which he pleases.

2. What writs are not turned into writs of right

de recto per narrationem, quia ille qui petit non habet nisi liberum tenementum.

& uti poterit quâ voluerit. Et tunc etiam una electa, vertitur quandóq; una in aliam. Competit enim ei breve de ingressu, vel breve de recto. Et si breve de ingressu eligitur ubi omnia p̃dicta concurrunt, & petens fundaverit intentionem suam, & docuerit de jure suo, & quòd ad ipsum pertineat actio, tunc proponet ingressum, & illum probet per patriam vel instrumentum, ut supra dicitur.

3. Qualiter et quæ vertuntur. f. 326 b.

Et si primô posuerit ingressum, & postea docere velit de mero jure suo per descensum, sic vertitur breve de ingressu ad breve de recto, & conjungitur una actio cum alia, scilicet per breve de recto, vel per breve de ingressu per juratam, secundum quod tenens elegerit, totum terminabitur negotium. Et ideò habet tenens electionem, quia si, cùm petēti plures competant actiones, & uti poterit qua voluerit, eodem modo si tenenti cōpetant plures responsiones sive exceptiones peremptoriæ, quæ terminant totum negotium, uti poterit pro voluntate sua quacunq; illarum voluerit, quatenus tempus & probatio permiserit, ut si se tenuerit tenens ad ingressum, cavēdum erit quòd terminus non excedat tempus assisæ mortis antecessoris, ita quòd deficiat probatio de proprio visu & auditu. Et si se tenuerit ad rectum, extunc sicut p̱ breve de recto erit procedendum, postquam tenens se posuerit in magnam assisam, vel se defenderit per duellū : & sic vertetur una actio p̱prietatis in aliam super p̱prietate. Sed actio super possessione nunquam per narrationē vertetur ad actionem super p̱prietate, nec e conversò. Sed cùm utraq; actio cōpetat petenti ab initio, & inceperit

And then even upon one having been chosen, sometimes one is turned into the other. For he is entitled to a writ of entry or to a writ of right. And if the writ of entry be chosen where all the aforesaid conditions concur, and the claimant has founded his declaration and has explained his right, and that the action appertains to him, then he shall propound his entry, and let him prove it by the country, or by an instrument, as above said.

through the pleadings, because the claimant has only a freehold

3. In what manner and what writs are so turned. f. 326 b.

And if he has first propounded his entry, and afterwards wishes to explain his mere right by a descent, then the writ of entry is turned into a writ of right, and the one action is conjoined with the other, to wit, through a writ of right, or through a writ of entry through a jury, according as the tenant has elected, the whole business shall be determined. And accordingly the tenant has an election, because if, when the claimant is entitled to several actions and may employ which he pleases, in the same manner if the tenant is entitled to several answers or peremptory exceptions, which terminate the whole business, he may employ according to his pleasure whichever of these he wishes, as far as time and proof permits, as if the tenant has held himself to an entry, he must be careful that the term does not exceed the time of an assise of mortdancester, so that the proof from the proper sight and hearing [of the witnesses] should fail. And if he has held himself to the right, thenceforward the proceedings must be as through a writ of right, after the tenant has put himself upon a great assise, or should defend himself by battle, and so one action of proprietorship shall be turned into another action concerning the proprietorship. But an action of possessorship shall never be turned by the pleadings into an action concerning the proprietorship, nor conversely. But when the claimant is entitled from the commencement to either action and has begun at first to claim by a

petere primò per breve de recto, & narraverit de jure suo per descensum, si tempus ꝑbationis permiserit in fine, post descēsum bene poterit descendere ad ingressū per hæc verba. Et unde talis non habet ingressū nisi ꝑ talē cui &c. (ut supra per totū), sive hoc fuerit de ꝑpria seysina sive aliena, & tunc (ut supra) secundum quod tenens elegerit defensionem erit ꝑcedendum, sicut ꝑ breve de recto in omnibus, tam in essoniis quàm in aliis, secundū q̄ ꝑceditur per breve de ingressu, & de hac materia infra de essoñ de malo lecti.

4. Qualiter recurritur per inquisitionem per juratam de ingressu.

Quandoq̄ tamen locū habet breve de ingressu, & ꝑbatio de visu ꝑprio & auditu, ultra terminum assisæ mortis antecessoris, q̄ quidem contingit de necessitate, & ꝑ defectu alterius actionis, ubi quis, qui nō habuerit nisi liberum tenementum, dimiserit ad terminū longissimū, qui excedit tēpus assisæ mortis antecessoris, & ubi scilicet agere non possit ꝑ breve de recto sup̄ jure mero, cū nullū aliud ei cōpetat remedium, tunc de necessitate recurritur ad inquisitionē ꝑ juratā de ingressu, non obstante termino, quia q̄ aliàs non est licitū, necessitas licitū facit, ut si quis, qui ad vitā tenuerit quacūq̄ ratiōe, vel in feodo sine usu & expletiis, dimiserit ad terminū talē qui excedit tēpus assisæ mortis antecessoris, & ulteriùs supvixerit ꝑ tēpus qui[1] excedit terminū, adhuc subvenitur ei ꝑ breve de ingressu, & ꝑ juratam & ꝑbationē de visu ꝑprio alicujus & auditu, q̄ de jure non esset cōcedendū. Et q̄ ita fieri possit, ꝑbatur de termino S. H. anno regis H. viii. in coñ Lync. de Thoma de Estotengni, ubi quædā, quæ tenuit nomine dotis, dedit cuidam ad terminum dotem suam, qui duravit per lx. annos & amplius. Et petiit per breve de ingressu. Et secundū ea quæ dicta sunt, perpendi poterit q̄ quodlibet breve de in-

[1] "quod," MS. Rawl. C. 160.

writ of right and has pleaded concerning his right by descent, if the time of the proof will permit at the end, after the descent he may well be able to descend to an entry in these words: and whereof so-and-so has no entry except through such an one to whom &c. (as above through the whole), whether this may have been of his proper seysine or of another's, and then (as above) proceedings must be had according as the tenant has elected his defence, as in a writ of right in all things as well in essoins as in other matters according to the course of proceeding in a writ uf entry, and on this matter below concerning an essoin of an illness confining one to bed.

4. In what way recourse is to be had through an inquest by a jury concerning entry.

Sometimes however a writ of entry has place, and a proof by the proper sight and hearing of witnesses, beyond the term of an assise of mortdancester, and where an action could not be brought by a writ of right upon the mere right, when he is entitled to no other remedy, then of necessity recourse must be had to an inquest by a jury concerning entry notwithstanding the term, because what otherwise is not lawful, necessity makes lawful, as if a person who holds for life in any manner whatsoever, or in fee without user and profits, has demised for such a term which exceeds the time of an assise of mortdancester, and has survived to a further period for a time which exceeds the term, he is still succoured by a writ of entry and by a jury, and a proof by the proper view and hearing of some one, which of right would not have to be conceded, and that it may so is proved in Hilary term in the eighth year of king Henry in the county of Leicester, concerning Thomas of Estotengni, where a certain woman who held in the name of dower, granted her dower to some one for a term, which lasted for sixty years and more. And he claimed by a writ of entry. And according to what has been said, it may be understood that

gressu non convertitur in breve de recto, nec etiam in persona cujuslibet petentis per breve de ingressu, quia ei soli competit qui loqui possit de seysina propria, vel alicujus antecessoris sui, qui inde obiit seisitus ut de feodo & jure, & cujus seysinam petierit, non autem in persona ejus qui ad terminum annorum tenuerit, sicut firmarius, ut si ad terminum alicui tradiderit, & finito
f. 327. termino illo terminum suum repetere voluerit. Item dici poterit de eo qui tenuerit ad terminum vitæ quocunq̃ modo ut liberum teñtum, & illud dimiserit ad terminum, & finito termino repetere velit q̧ dimisit. Item illud idem dici poterit de eo qui non tenuerit nisi in feodo tantum, sine jure mero, i. sine usu & expletiis; & tales, licet jus habuerint quale quale, sicut jus possessorium, non tamen petere poterunt jus proprietatis, nec in judiciū deducere, quia jus tale non habuit. Cùm igitur competat alicui utrumq̃ jus, viz. possessionis, & ꝓprietatis, & petat ꝑ breve de ingressu seysinā ꝑpriam, vel alicujus antecessoris, ut jus & hæreditatem suam, vel maritagiū suum cum expressione tali vel sine, & sic dicat in fundatione intentionis suæ. Peto tantū terræ cum ꝑtinentiis ut jus meum &c. Et unde ego, vel talis antecessor meus fuit seysitus in dominico suo ut de feodo tempore talis regis, capiendo expletia ad valentiam tanti, & de tali descendit jus illius terræ tali, & sic per omnia sicut per breve de recto, usq̃ ad petentē. Et tunc adjiciat: & unde idem talis non habuit ingressum nisi ꝑ talem &c. Et ita q̧ faciat mentioñ de ingressu, statim incipit breve de ingressu esse breve de recto ex narratione petentis, nisi

every writ of entry is not converted into a writ of right, nor indeed in the person of every claimant by a writ of entry, for he is alone entitled to it who can speak of his proper seysine, or of the seysine of some ancestor of his, who died seysed thereof as of fee and right, and whose seysine he claimed, but not in the person of him who held only for a term of years, as a termor, as if he had delivered a thing to any one for a term of years, and that term having been finished he wished to reclaim his term. The same may be said concerning him who has f. 327. held for the term of his life in whatever manner as a free tenement, and has demised it for a term, and upon the term being finished wishes to reclaim what he has demised. Likewise the same may be said, concerning him who has not held except only in fee without the absolute right, that is without the use and profits, and such persons although they have a right of some kind or other, as a possessory right, cannot however claim a right of property, nor bring it into court, because he had not such a right. When therefore any one is entitled to either right, a right of possession and of property, and he claims by a writ of entry his own seysine, or the seysine of a certain ancestor, as his right and inheritance, or his marriage portion with or without such an expression, and alleges thus in the foundation of his declaration, I claim so much land with its appurtenances as my right &c., and whereof I myself or so-and-so my ancestor was seysed in his domain as of fee in the time of such a king, by taking profits for the value of so much, and from such person the right of that land descends to so-and-so and so through everything as in a writ of right, up to the claimant. And then add, and whereof the said so-and-so had no entry except through such a person &c. And so that he makes mention of an entry, the writ of entry begins forthwith to be a writ of right from the pleadings of the claimant, unless the tenant

tenens ingressum elegerit. Et cùm in electione tenẽtis sit ab initio in responsione sua utrum se tenere voluerit ad defensionem juris vel ingressus, omnia habebit remedia, & omnes dilationes quæ ei cõpetere possent ꝑ breve de recto, saltem quousq̃ elegerit defensioñ juris vel ingressus. Et si defensionem juris elegerit, remaneat loquela sicut ꝑ breve de recto. Si autem defensionem ingressus, q̃ tunc desinat esse bre de recto, & redeat iterum ad naturã suam sicut ꝑ breve de ingressu. Cùm autẽ petens ab initio, & in intentione sua ꝓponat utrumq̃, scilicet jus & ingressum, oportet q̃ offerat se ꝓbare utrumq̃, nisi tenens velit jus suum recognoscere. Ad cujus intentionem & ꝓbationem oportet tenentẽ utrumq̃ defendere, habebit tamen electionem quam istarum defensionũ subire voluerit, juris viz. vel ingressus: utramq̃ verò subire non tenetur, cùm una sufficiat ꝑ se sine alia, quia cùm petens jus suum ꝓponat & ingressum, si in ꝓbatione unius deficiat, erit quasi deficeret in probatione utriusq̃, ꝓpter conjunctionem copulativam (&) quæ utramq̃ conjungit. Expedit igitur tenenti illã partem eligere, quam petens ꝓbare non possit, & incerta erit ꝓbatio petẽtis, donec tenens elegerit: poterit enim petens jus habere in re petita, & tamẽ inde ingressus nõ erit talis ut ꝓponitur; vel è converso, poterit etiam esse q̃ petens jus habeat in re petita, & q̃ talis sit ingressus ut ꝓponitur, quo casu cùm tenens ad duas non teneatur defensiones, nec petens per consequens ad duas probationes, & factâ electione, probare possit illam quam tenens elegerit, hoc erit tenenti periculosum. Et quia, cùm elegerit

has elected an entry. And since it is at the election of the tenant from the commencement in his answer whether he will keep himself to the defence of his right or of his entry, he will have every remedy and every delay to which he could be entitled by a writ of right, at least until he has chosen the defence of his right or of his entry. And if he has chosen the defence of his right, let the argument stand over as in a writ of right. But if he has chosen the defence of his entry, that then it ceases to be a writ of right, and it returns again to its nature as through a writ of entry. But when the claimant from the commencement and in his declaration propounds both, to wit, his right and his entry, it is incumbent that he offer to prove both, unless the tenant wishes to recognise his right. To whose declaration and proof it is incumbent that the tenant defend both, he shall have however the election which of these defences he wishes to undertake, to wit, that of the right or of the entry: but he is not bound to undertake both, since one is sufficient by itself without the other, for when the claimant propounds his right and his entry, if he fails in the proof of one, it will be as if he failed in the proof of both on account of the copulative conjunction (and) which conjoins both. It is expedient therefore for the tenant to choose that part which the claimant cannot prove, and the proof of the claimant will be uncertain until the tenant has elected; for the claimant may have a right in the thing claimed, and nevertheless the entry thereof will not be such as is propounded; or conversely, it may even be that the claimant has the right in the thing claimed, and that the entry has been such as is propounded, in which case, since the tenant is not held to two defences, nor the claimant consequently to two proofs, and an election having been made, he may prove that which the tenant has elected, this will be perilous to the tenant. And because when he has elected

jus, videtur tacitè innuere per consequens ingressum esse talem ut proponitur, & è conversò. Cùm autem tenens elegerit defensionem juris contra intentionem & probationem petentis, & aliam habebit electionem utrum viz. se ponere voluerit in magnam assisam, vel defendere per duellum, secundum quod inferiùs dicetur in causa proprietatis, per breve de recto, & maximè si tales sint personæ petens & tenens, quod inter eos
f. 327 b. jaceat magna assisa vel duellum. Si autem conjunctæ
Cf. 267 b. sint personæ, & sit jus descendens utriquè de uno stipite, sicut inter fratres, antenatum & postnatum, avunculum & nepotem, ubi locum habebit computatio, quis eorum sit hæres propinquior, & cùm de propinquitate constiterit, quamdiu casus regis duraverit, nunquam ad judicium procedetur. Cùm autem breve de recto (ut prædictum est) per narrationem petentis, & responsionem tenentis qui ingressum elegerit, vertatur ad breve de ingressu, ex tunc deficiunt tenenti esse dilationes, & essonia de malo lecti, quæ ei competebant antequam tenens ingressum eligeret, & extunc procedendum erit sicut per breve de ingressu. Si autem defensionem juris elegerit, tunc fiat per omnia sicut dictum est supra inter extraneas personas & conjunctas. Et in fine notandum, quod si inter conjunctas personas in placito per breve de recto, & per narrationem adjiciatur de ingressu, non expedit tenenti quòd se teneat ad ingressum, quia si talis sit ingressus ut proponitur, & probari possit, & tenens cùm ingressum elegerit, & per consequens tacitè innuit jus esse petentis, ut proponitur, probato ingressu, non obstante casu regis, petens obtinebit. Si autem ad defensionem juris

the right, he seems silently to imply as a consequence that the entry has been such as is propounded, and conversely. But when the tenant has elected the defence of the right against the declaration and proof of the claimant, he shall also have another election whether he will put himself upon a great assise, or defend himself by battle, according to what shall be said below in a cause of property by a writ of right, and chiefly if the claimant and the tenant be such persons, that a great assise or battle lies between them. But if they be f. 327 b.
privies in blood, and each has a right of descent from one stock, as between an elder and a younger brother, an uncle and a nephew, where a computation shall have place, which of them is the next heir, and when the next heir has been ascertained, they shall never proceed to judgment as long as the case of the king shall last. But when a writ of right (as said above) through the declaration of the claimant and the answer of the tenant, who has elected (to defend) his entry, is turned into a writ of entry, thenceforward delays cease to be allowable to the tenant and essoins of illness confining him to his bed, to which he was entitled before the tenant elected (to defend) his entry, and thenceforth proceedings must be taken as by a writ of entry. But if he has chosen to defend his right, then let every thing be done as above said between strangers and privies in blood. And in the end it is to be noted, that if between privies in blood in a plea by a writ of right and through the declaration mention be added of the entry, it is not expedient to the tenant that he hold himself to the entry, because if the entry be such as is propounded, and it can be proved, and the tenant when he has elected the entry, and consequently has tacitly implied that the right is the claimant's, as propounded, upon the entry having been proved, notwithstanding the case of the king, the claimant shall prevail. But if he has kept himself to the

se tenuerit, sive talis sit ingressus ut proponitur, sive non, factâ computatione parentelæ, quamvis constiterit quis eorum sit hæres propinquior, nunquàm ꝑcedet judicium ꝑpter casum regis, nec aliud unquàm in causa ꝑprietatis, inter conjunctas personas, durante casu, dum tamen tenens ad defensionem juris se tenuerit.

defence of his right, whether his entry be such as is propounded or not, upon a computation of relationship having been made, although it has been established which is the next heir, the judgment shall never proceed on account of the case of the king, nor any other ever in a cause of property between persons privies in blood, whilst that case lasts,[1] provided however that the tenant has kept himself to the defence of his right.

[1] The case of the king, to wit of King John against his nephew, Arthur of Brittany, came to an end on the death of Eleanor, the sister of Prince Arthur, in 1241, when both titles to the crown were united in King Henry III.

# INCIPIT LIBER QUINTUS,

QUI DIVIDITUR IN

# QUINQUE TRACTATUS,

# QUORUM PRIMUS EST DE RECTO.

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## Cap. I.

1. De materia hujus libri.

Expedito tractatu de assisis & recognitionibus, quæ proditæ sunt sup̄ jure possessorio, ad seysinam p̄priam vel alicujus antecessoris ut de feodo recuperādā: et similiter expedito tractatu placitorū de ingressu assequendo, cōsequēter agendū erit d̄ placito sup̄ jure, & p̄prietate, de seysina p̄pria vel alicujus antecessoī, de teñto vel aliquo alio jure, d̄ quo ātecessor nō obiit seysitus ut de feodo, & ubi in judiciū deduciť, & terminať utrūq̄ jus simul, tā possessioñ viz. quam proprietatis, secundum quod inferiùs dicetur, & ibi ratio quare.

f. 328.

2. Quare hoc placitum de recto ultimo ponitur. Britton, vi. ch. iv.

Placitū vero de recto ultimū sibi locum vendicat in ordine placitorū, quia quicunq̄ in hoc placito semel amiserit p̄ judicium, vel per assisam, vel per duellum, nunq̄m ad aliā actionem habebit regressum, quia sēper obstabit ei exceptio rei judicatæ. Et tale erit judicium reddend', scilicet q̄ petens recuparet seysinam suā quietè sibi & heredibus suis, de p̄dicto tali tenente

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[1] Hic incipit Liber Quintus de tractatu super Breve de Recto. MS. Rawl. C. 160.

# HERE BEGINS THE FIFTH BOOK,

WHICH IS DIVIDED INTO

# FIVE TREATISES,

OF WHICH

# THE FIRST IS ABOUT RIGHT.

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## Chapter I.

1. Concerning the matter of this book.

The treatise having been completed concerning assises and recognitions, which have been handed down to us respecting possessory right, to recover one's own seysine or the seysine of an ancestor as of fee, and in like manner the treatise of pleas for obtaining entry having been completed, we must consecutively treat of the plea respecting right and property, of one's own seysine or of the seysine of an ancestor, concerning a tenement or any other right, of which an ancestor has not died seysed as of fee, and where it is brought into judgment and both rights are determined simultaneously, as well that of possession as of property, according to what will be said below, and there the reason wherefore. f. 328.

2. Wherefore this plea respecting right is placed last.

But a plea of right claims for itself the last place in the order of pleas, because whoever in this plea has once lost through a judgment or through an assise, or through battle, shall never have recourse to another action, because the exception of the matter having been adjudged will always be in the way. And such a judgment will have to be rendered, to wit, that the claimant should recover his seysine quietly for himself and his heirs from so-and-so the tenant aforesaid and his heirs in per-

& hæredibus suis imperpetuum. Per judiciū dico: quia secùs est si per defaltā, aliqua habita distinctione, sicut inferiùs diceť de defaltis. Et si quis semel egerit p hoc breve de recto qualitercunq̃, (ut p̃dictum est,) si in suo loco impetretur, nunquā postmodū ad actionē super possessioñ regressum habebit, & maximè cùm placitum p breve de recto utrumq̃ jus, tam possessionis quàm ꝓprietatis (ut paulò ante dictum est), comprehendat.

## Cap. II.

1. De diversis formis brevium de recto.

Et quia variæ sunt formæ brevium de recto, ideo de formulis videamus, & imprimis de illis quæ aliquando terminantur in curia dominorum suorum, quorum hæc est prima. Rex tali episcopo salutem. Præcipimus tibi, quòd sine dilatione plenum rectum teneas tali de tanto terræ cum pertinentiis in tali villa, quod clamat tenere de te p liberum servitium tanti per annum pro omni servitio, & quod talis ei deforciat Et nisi feceris, vic' talis faciat, ne amplius inde clamorem audiamus pro defectu recti. Teste &c. Vel sic: de tertia parte unius feodi militis in tali loco vel villa, quam clamat de te tenere, & quam talis ei deforciat. Si autem servitium fit militare, tunc sic: Per servitium feodi unius militis, vel dimidii, vel quartæ partis feodi unius militis, vel per servitium tot denariorum quando 40 s. capiuntur de scuto, vel sic: per servitium tot denariorum quando duæ marcæ, vel xx. s. capiuntur de scuto, vel per servitium, unde tot carucatæ faciunt feodum unius militis, vel sic: per servitium, unde tot bovatæ vel tot virgatæ terræ faciunt feodum unius militis pro omni servitio. Et notandum quòd in servitio militari non dicitur per liberum servitium, & ideò, quia constat quòd feodum tale liberum est,

petuity. I say by a judgment, because it is otherwise if it is through default, some distinction having been made, as will be explained below concerning defaults. And if any one has once proceeded by this writ of right in any manner whatever (as aforesaid), if it be sued out in its proper place, he shall never have recourse afterwards to an action about the possession, and chiefly since a plea by a writ of right comprehends each right, that of possession as well as of property, as has been stated above.

## Chapter II.

1. Of different forms of writs of right.

And because the forms of writs of right are various, therefore let us see about formulas, in the first place concerning those, which are sometimes determined in the court of their own lords, of which this is the first. The king to such a bishop greeting. We enjoin you, that without delay you maintain full right to such an one of so much land with its appurtenances in such a vill, which he claims to hold of thee by a free service of so much by year for all service, and which so-and-so deprives him of. And unless you do so, let such a viscount do it, that we may not hear any further complaint thereof for default of right. Witness &c. Or thus, of the third part of a knight's fee, or of a half fee, or a fourth part of a fee of one knight, or by the service of so many denarii when forty solidi are taken for a shield, or thus, by a service of so many denarii when two marks or twenty solidi are taken for a shield, or by a service, under which so many carucates make the fee of one knight, or thus, by a service under which so many bovates and so many virgates of land make the fee of one knight, for every service. And it is to be noted that in the case of military service it is not said by free service, and for this reason, because it is certain that such a fee is free, nor even, where the quantity of the

nec etiam, ubi quantitas feodi exprimitur in quātitate terræ petitæ, non opponitur[1] aliquod servitium, quia in quantitate feodi ostenditur quantitas servitii. Sunt autē infinita s̄vitia, & diversa, & innumerabilia in brevi de recto, secundū q̄ sunt à diversis dominis capitalibus feoffatoribus constituta. Et ideò non possūt in scripto cōprehendi omnia. Fit etiam aliquando feoffamentum sic, & breve sic. Quod clamat tenere de te per liberum servitium inveniendi tibi unum servientem equitem ad eundum tecum in exercitum in Walliam, ad
f. 328 b. summonitionem tuam, ad custum suum, vel custum tuum, pro omni servitio, vel sic: Per liberum servitium sequendi curiam tuam, vel portandi brevia tua infra regnum Angliæ, ad summonitionem tuam, & custum suum, vel custum tuum, pro omni servitio, vel sic:
Britton, iii. ch. ii. § 6. Per servitium unius asturcii sori, vel unius espervarii sori, vel per servitium unius paris calcarium deauratorum, vel albarum cherothecarum, pro omni servitio, & sic de aliis, secundum formam chartarum & feoffamentorum. Fit etiam aliquando servitium annuum, & servitium militare simul & pro eadem terra, & tunc in brevi proponendum est servitium annuum, sic: Per liberum servitium x. s. per annum, & tunc dicatur, & per s̄vitium unius feodi militis pro omni servitio, quia si hæc determinatio p̄ annum postponeretur huic ultimæ clausulæ, sic videretur referri ad totum præcedens, & ita sequeretur inconveniens, quia servitium militare non est annuum.

2. Breve de recto, si terra partibilis sit in socagio.

Rex tali domino salutem. Præcipimus tibi, quòd justè & sine dilatione plenum rectum teneas talibus de tanto terræ cum pertinentiis in tali villa, quod clamant esse rationabilem partem suam quæ eos, vel eas, contingit de libero tenemento quod fuit talis patris,

[1] "apponitur," MS. Rawl. C. 160.

fee is expressed in the quantity of the land claimed, there is not appended any service, because in the quantity of the fee is shown the quantity of the service. But services are infinite and diverse and innumerable in a writ of right, according as they have been appointed by different chief lords the feoffors. And therefore they cannot all be comprehended in writing. A feoffment is also sometimes made in this manner, and a writ thus: That he claims to hold of thee by a free service of finding for you one serving horseman to go with you to the army in Wales at your summons, at his own cost or at your cost, for the entire service; or thus, by the free service of following your court, or of carrying your writs within the realm of England at your summons and at his own cost, or at your cost, for the entire service; or thus, for the service of one falcon in his first plumage, or of one sparrow-hawk in his first plumage, or for the service of one pair of gilt spurs, or one pair of white gloves, for the entire service, and so of others, according to the form of the charters and of the feoffments. There is sometimes established a yearly service, and a military service at the same time and for the same land, and then in the writ the yearly service is to be propounded thus: by a free service of ten solidi annually, and then let it be said, and by the service of one knight's fee for the entire service, because if this determination "annually" were postponed to this last clause, it would thus seem to be referred to the whole which precedes it, and the consequence would be inconvenient, because military service is not annual. f. 328 b.

2. A writ of right if the land be shareable in socage.

The king to lord so-and-so greeting. We enjoin you, that justly and without delay you maintain full right to such persons of so much land with its appurtenances in such a vill, which they claim to be their reasonable share that belongs to them, male or female, of a free tenement which belonged to so-and-so their father or their

vel matris, avi vel aviæ, avunculi vel amitæ sui[1] in eadem villa, & tenere de te per liberum servitium tanti per annum pro omni servitio, quod talis ei deforciat, & nisi feceris, vicecomes talis faciat ne amplius inde clamorem audiamus pro defectu recti. Teste &c., vel sic: Quod clamat[2] esse de rationabili parte sua quę eos contingit de libero tenemento quod fuit talis patris vel matris, avunculi vel amitæ, ut supra.

3. Breve de recto ballivis sokæ vel custodibus bonorum.

Rex ballivo sokæ de tali loco, vel custodi talis honoris salutem. Præcipimus tibi quòd sine dilatione plenum rectum teneatis tali, de tanto terræ cum pertinentiis in tali villa, quod clamat tenere de prædicta soka, vel de prædicto honore, per liberum servitium tanti per annum pro omni servitio, quod talis ei deforciat, & nisi feceris, talis vicecom̃ faciet, ne ampliùs inde clamorem audiamus p̱ defectu recti. Teste &c.

4. Breve de recto, si quis tenere debet in capite de rege.

Rex vicecomiti salutem. Præcipe tali quòd justè &c. reddat tali tantum terræ cum pertinentiis in tali villa, quod clamat esse jus & hæreditatem suam, & tenere de nobis in capite, & unde queritur quòd prædictus talis injustè ei deforciat, & nisi fecerit, & idem talis fecerit te securum de clamore suo prosequendo, tunc sum̃oneas per bonos summonitores præfatum talem, quòd sit coram justitiariis nostris apud Westmonasterium, tali die, ostensurus quare non fecerit, & habeas ibi summonitores, & hoc breve. Teste &c.

5. Breve de recto custodi, ubi hæres fuerit infra ætatem.

Rex custodi terræ & hæredis talis salutem. Præcipimus tibi quòd justè & sine dilatione plenum rectum teneas tali de tanto terræ cum pertinentiis in tali villa, quod clamat tenere de prædicto hærede per liberum servitium tanti per annum pro omni servitio, quod talis ei deforciat, & nisi feceris, vicecomes noster talis faciat, &c. ne ampliùs &c.

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[1] "suæ," MS. Rawl. C. 160. | [2] "clamant," id.

mother, grandfather or grandmother, uncle or aunt in the same vill, and to hold from you by the free service of so much for the year for all service, which so-and-so deprives him of, and unless you do so, let such a viscount do it, that we may not any longer hear a complaint thereon from defect of right. Witness &c., or thus: which they claim to be of their reasonable share, which belongs to them, of the free tenement which belonged to such a father or mother, uncle or aunt as above.

3. A writ to the bailiff of the soke of such a place or to the keeper of such an honour.

The king to the bailliff of the soke of such a place, or to the keeper of such an honour, greeting. We enjoin you that without delay you maintain full right to such a person of so much land with its appurtenances in such a vill, which he claims to hold of the aforesaid soke, or of the aforesaid honour, by a free service of so much for the year for all service, which so-and-so deprives him of, and unless you do so viscount so-and-so shall do so, that we may not hear any longer a complaint thereon for defect of right.

4. A writ of right, if any person ought to hold in chief of the king.

The king to the viscount greeting. Enjoin so-and-so that justly &c. he restore to such an one so much land with its appurtenances in such a vill, which he claims to be his right and inheritance, and to hold of us in chief, and whereof he complains that so-and-so aforesaid deprives him, and unless he do so, and if the said so-and-so has given you security to prosecute his claim, then summon by good summoners so-and-so aforesaid, that he appear before our justiciaries at Westminster on such a day in order to show wherefore he has not done so, and have there the summoners and this writ. Witness &c.

5. A writ of right to a guardian, where the heir is under age.

The king to the guardian of the land and of the heir of so-and-so greeting. We enjoin you that justly and without delay you maintain full right to such a person of so much land with its appurtenances in such a vill, which he claims to hold of the aforesaid heir by free service of so much by the year for all service, which so-and-so deprives him of, and unless you do so, let our viscount so-and-so do it &c., that we may no longer &c.

6. Breve ballivis manerio-rum secun-dum con-suetudi-nem ma-neriorum.

Rex ballivis suis de tali villa salutem. Præcipimus vobis, quòd sine dilatione & secundum consuetudinem manerii nostri de tali villa plenum rectum teneatis tali, de tāto terræ cum pertinentiis in tali villa, quod talis ei deforceat, ne ampliùs &c. Teste &c. Si autem burgagium petatur, tunc sic.

f. 329.

7. Breve ballivis de burgo.

Rex ballivis suis de tali burgo salutem. Præcipimus vobis, quod plenum rectum teneatis A. de tali villa, de uno mesuagio cum ꝑtinentiis in tali villa, quod clamat tenere de nobis per liberum servitium tanti per annum ꝑ omni servitio, vel in liberum burgagium, vel in liberum maritagium pro omni servitio, quod talis ei deforciat, & nisi, &c. Teste &c. Est etiā alterius modi breve de recto, quod dirigitur hæredi alicujus, sub nomine mulieris quæ habuit partē dotis suæ, sive plus sive minus, quod tale est.

8. Breve de recto de dote, ubi mulier partem habuerit.

Rex tali heredi salutem. Præcipimus tibi, q̄ sine dilatione plenum rectū teneas tali mulieri, de tertia parte tantæ terræ, vel redditus, vel bosci, vel prati, vel unius vel duorū, vel tot mesuagiorū, cum ꝑtinentiis in tali villa, q̄m clamat esse de rationabili dote sua, que eam contingit de liberto teñto quod fuit talis quondam viri sui in eadem villa, vel in alia, & tenere de te ꝑ liberum servitium ut supra. Si autem dos, quæ petitur, defendi debet sub servitio dotis que tenetur, tunc sic: Quam clamat pertinere ad liberum tenemtum suum quod de te tenet in dotem in eadem villa vel in alia, ꝑ tale servitiū: vel sic, Quam clamat tenere de te in dotē ꝑ tale servitiū. Est etiā alterius modi br̃e de recto de consuetudinibus & s̃vitiis, quod im̃ediatè diri-

6. A writ to the bailiffs of manors according to the custom of the manor.

The king to his bailiffs of such a vill greeting. We enjoin you that without delay, and according to the custom of our manor in such a vill, you maintain full right to such an one of so much land with its appurtenances in such a vill, which so-and-so deprives him of, lest any longer &c. Witness &c. But if a burgage tenancy be claimed, then thus.

f. 329.

7. A writ to the bailiffs of a borough.

The king to his bailiffs of such a borough greeting. We enjoin you that you maintain full right to A. of such a vill of a messuage with its appurtenances in such a vill, which he claims to hold of us by a free service of so much for the year for all service, either as a free burgage tenure or a free maritage for all service, which so-and-so deprives him of, and unless &c. Witness &c. There is also a writ of right of another kind, which is directed to the heir of any one, under the name of the woman who has had part of her dower whether more or less, which is of this tenor.

8. A writ of right concerning dower, where a woman has had part.

The king to such an heir greeting. We enjoin you that without delay you maintain full right to such a woman of the third part of so much land or its revenue, or of so much wood or meadow, or of one or of two or of so many messuages with their appurtenances in such a vill, which she claims to be of her reasonable dower which accrues to her from a free tenement, which belonged to so-and-so formerly her husband in the same vill, or in another vill, and to hold of you by a free service as above. But if the dower which is claimed ought to be defended under the service of the dower which is held by her, then thus: which she claims to pertain to her free tenement, which she holds from you as dower in the same vill or in another by such a service; or thus, which she claims to hold from you as her dower by such a service. There is likewise a writ of right of another kind concerning customs and services, which is addressed immediately to the

gitur vicecomiti, ubi tenens švitium suū dedixerit in parte vel in toto, quod tale est.

Rex vic. salutem. Præcipe tali, q justè & sine dilatione[1] faciat tali consuetudines & recta švitia, quę ei facere debet de libero tenemto quod de eo tenet in tali villa, & nisi fecerit, & idem talis fecerit te securū &c. tunc sūmoneas p bonos sūmonitores &c. q sit corā justic' nostris ad primā assisam, cùm in partes illas venerint, ostensurus quare non fecerit. Et habeas &c. Teste &c. De švitio vero q quis cognoverit, si illud facere aliquādo contradixerit, dirigitur tale breve vic' de justitiando eum, q dicitur breve de recto, in hac forma: Rex vic' salutem. Præcipimus tibi, quòd justities talem, q justè & sine dilatione faciat tali consuetudines & recta švitia, quæ ei facere debet de libero tenemto suo quod de eo tenet in tali villa, ut in homagiis, releviis, redditibus, arreragiis & aliis, sicut rationabiliter monstrare poterit quod ei facere debeat, ne ampliùs inde clamorem audiamus p defectu justitiæ. Teste &c. Si autem tenementum fuerit in burgo, tunc dicatur sic: Quod talis faciat tali recta švitia, nulla tamen fiat mentio de consuetudinibus.

## Cap. III.

1. Qualiter placita transferuntur a curia dominorum usque ad comitatum.

Constat ex precedentib[9] q quædā sunt bŕia de recto ex supra nominatis quæ in curia dōinorū terminari debēt, & quæ aliquando p defaltā dominorū, qui rectū tenere vel nolūt, vel non possunt, transferūt ad comitat̃, & ibi multis modis terminari poterunt, nisi ita sit

[1] "et recte," MS. Rawl. C. 160.

viscount, where the tenant has denied his service in whole or in part, which is of this kind.

9. A writ of right concerning services and customs.

The king to the viscount greeting. Enjoin so-and-so, that justly and without delay he do to such a person his customs and right services, which he ought to do to him in respect of the free tenement, which he holds of him in such a vill, and unless he do so, and if the said so-and-so has given you security &c., then summon him by good summoners &c., that he appear before our justiciaries at the first assise, when they shall have come into those parts, in order to show wherefore he has not done it. And have &c. Witness &c. But concerning a service which any one has acknowledged, if he has at any time refused to do it, a writ of this kind is directed to the viscount for enforcing justice against him, which is called a writ of right, in this form. The king to the viscount greeting. We enjoin you, that you enforce justice against so-and-so, that justly and without delay he do to so-and-so the customs and right services, which he ought to do for his free tenement, which he holds from him in such a vill, as in homages, reliefs, rents, arrears and other things, as he will be able reasonably to show that he ought to do to him, that we may not any longer hear a complaint thereof for failure of justice. Witness &c. But if the tenement be in a borough, then let it be stated in this manner: that so-and-so perform for such a person right services, but let no mention be made of customs.

## Chapter III.

1. How pleas are transferred from the lord's court to the county court.

It is clear from what precedes, that there are some writs of right out of those above-named, which ought to be determined in the lord's court, and which sometimes from the default of the lords, who are either unwilling or unable to maintain the right, are transferred to the county court, and may be there determined in many ways,

q tenens se posuerit in magnam assisam, vel q dominus rex (ad instantiam petentis, & aliquando ad instantiam tenentis, sed ex justa causa) velit q loquela ad
f. 329 b. curiã suam a comitatu transfertur,[1] ideò per ordinem
Britton, vi. ch. iv. § 3. erit incipiendum à curiis dominorum, ubi ipsi dom̃ quandoque curiam tenent & quandoque eorum ballivi, ut si ipse petens tenere clamaverit de aliquo per liberum servitium, qui velit & possit loquelam in curia sua deducere & placitare & terminare per duellum, vel alio modo, qui quidem si nolit, vel non possit multis de causis, vel ꝑpter impotentiam, vel ꝑpter aliquam dubitationem emergentem, vel incidentem: & ita quòd curia sua de recto tenendo petenti deficiat, tunc ritè ꝑbata defalta per defaltam recti in curia dom̃ capitalis, vicecomes rectum teneat per verba in brevi cõtenta (si non feceris vic' hoc faciat).

2. Quod pluribus modis possit curia domini deficere.

Britton, *ib.* § 4. Fleta, 375.

Poterit quidem curia de recto tenendo deficere multis modis, ut si deforcians tenuerit de aliquo alio quàm de eo, de quo petens tenere clamaverit, quia in hoc casu non habet dominus capitalis coertionem, per quam deforciantẽ trahere possit ad curiam suam, propter quod de necessitate erit ad comitatũ recurrendum. Item quia capitalis dominus omninò recusat tenere rectum, vel cùm nemo sit vel inveniatur in curia, qui rectum teneat, vel quia ipse dominus nullam curiam habet, nec erit (ut videtur) ad superiores dominos capitales, præterquam ad comitatum, recurrendum, cùm in brevi contineatur, quòd si talis nominatus non fecerit q vic' immediatè se intromittat Item propter impotentiam domini capitalis, ut si warrantus vocetur, qui sit manens extra potestatem suam, vel fortè deforcians alibi se essoniaverit de malo lecti, quàm infra

[1] "transferatur," MS. Rawl. C. 160.

unless it be that the tenant has put himself upon a great assise, or that the lord the king (at the instance of the claimant and sometimes at the instance of the tenant, but for a just cause) wills that the argument be transferred from the county court to his own court; therefore f. 329 b. we will begin from the courts of the lords where the lords themselves sometimes hold the court, and sometimes their bailiffs, as if the claimant has claimed to hold from a certain person by a free service, who is willing and is able to bring the argument into his own court and to plead and to determine it by battle or in some other manner, who indeed, if he be unwilling or be unable for many reasons, either on account of his want of power, or on account of some doubt emergent or incident, and so that his court fails in maintaining the right to the claimant, then the default having been duly proved, through the default of right in the court of the chief lord, let the viscount maintain the right through the words contained in the writ (if you will not do it, let the viscount do it).

2. That the lord's court may fail in many ways.

The court indeed may fail in keeping the right in many ways, as if the disturber has held from somebody else than the person from whom the claimant claims to hold, because in this case the chief lord has no coercion by which he can drag the disturber into his court, on account whereof recourse must be had of necessity to the county court. Likewise because the chief lord altogether refuses to maintain the right, or when there is no one nor can any one be found in the court to maintain the right, or because the lord himself has no court, nor shall recourse (as it seems) be had to superior chief lords, but to the county, since it is contained in the writ, that if the party named shall not do justice, the viscount shall immediately intervene. Likewise on account of the want of power of the chief lord, as if a warrantor be called, who is resident beyond his jurisdiction, or by chance the disturber has essoined himself elsewhere on account of bed-sickness than within the power of the lord, and so

potestatem dom̃ sui, & ita q̃ milites mittere non possit, licet dominus. Rex faciat hoc aliquando per breve suum. Item si tenens posuerit se in magnam assisam, & aliæ sunt causæ infinitæ. Et si dominus capitalis rectū tenere inceperit, & postea obierit, licet hæres suus infra ætatem extiterit, propter hoc non cadit breve, quia curia judicabit.

3. De summonitionibus et modo procedendi in curia regis. Glanville, ii. c. 12. Fleta, 376. Britton, *ib.* § 5.

De summonitionibus vero ad curiam capitalis domini faciendis, quæ esse debeant, vel quot sursisæ, vel quot essoñ fieri, nclo inserrere[1] huic tractatui propter diversas consuetudines, quæ in diversis curiis diversimodè observantur. Sed sciendum q̃ in visu petendo, & in warranto vocando, aliquando & in exceptionibus proponendis, & in duellis vadiandis, & in omnibus aliis quæ in curia dominorum terminari possunt & debent, observari debent prout in curia regia observantur.

## Cap. IV.

1. Qualiter defalta recti in capitali domino debeat probari in curia regis.

Cum autē ita sit q̃ dom̃ capitalis rectum tenere nolit, vel non possit, & curia sua ita de recto defecerit, vidend' erit qualiter defalta p̃bari possit, & debeat, ita q̃ loquela ad coñ trāsferaī, & tūc quando loquela incipit esse in com̃, & usq̃ ad quod tempus dom̃ capitalis curiā suā petere possit, cùm fortè de recto non defecerit. Post defaltā curiæ domini capitalis, statim ad comitatum accedat petens & ostendat ibi q̃ curia domini sui ei defecerit de recto, & (secundū quosdam) vadiata p̃batione defaltæ in manum servientis domini regis, vic' dicat serviēti domini regis, q̃ assumptus secū p̃bis &

f. 330.

[1] "inserere," MS. Rawl. C. 160.

that he cannot send knights (to examine his condition) although he is the lord. The king may do this sometimes by his writ. Likewise if the tenant has put himself upon a great assise, and there are other infinite causes. And if the chief lord has begun to maintain the right and has afterwards died, although his heir may have been under age, the writ does not abate on this account, because the court will judge.

3. Of summonses and the mode of proceeding in the court of the lord the king.

But concerning the making of summonses to the court of the chief lord, what they ought to be, and how many adjournments and how many essoins there ought to be, I am unwilling to insert in this treatise on account of the diverse customs which are observed in diverse manners in diverse courts. But it is to be known in claiming a view, and in calling a warrantor, sometimes also in propounding exceptions and in wagering battle, and in all other things which may and ought to be determined in the court of the lord, the rules ought to be observed as they are observed in the court of the king.

## Chapter IV.

1. In what manner the default of right in the court of the chief lord ought to be proved in the court of the king.

But when it shall so happen that the chief lord is unwilling or is unable to maintain the right, and his court shall have made default of the right, it will have to be seen in what manner the default may and ought to be proved, so that the trial should be transferred to the county court, and then at what time the trial begins to be in the county court, and up to what time the chief lord may claim his court, when perchance it shall not have made default. After the default of the court of the chief lord let the claimant forthwith apply to the county court, and show there that the court of his lord has made default to him of right, and according to some the proof of the default having been wagered into the hand of the serjeant of the lord the king, let the viscount say to the serjeant of the lord the king, that having f. 330.

Britton, *ib.* § 6. legalibus hominibus, statim accedat ad curiā illius dom̃ capitalis, si curiam habuerit & curiā tenuerit, vel si curiam nō habuerit, tunc ad locū ubi habuerit reseātiam,[1] dum tamē hoc sit in feodo illo, ubi terra illa est quæ petitur, & si nihil horum habuerit vel fecerit, tunc sufficit q̄ defaltā p̄bet quo loco voluerit super feodum illud, secundū quod ipse dom̃ electioñ habuerit tenendi curiam suā quo loco voluerit sup̄ feodum suū (cū extra nō liceat de jure) & videat serviens si curia petēti defecerit de recto, q̄ ipse ei rectū tenere noluerit vel non possit, & statim p̄ juramētū ipsius petentis, & aliorū duorū quos petens secū habuerit, audiat serviens p̄bationem defaltæ in p̃sentia capitalis dom̃, si interesse voluerit p̄ se, vel p̄ certum attornatū, senescallū, vel aliū ballivum; secund' quod inveniri poterit de termino P. & S. T. año regis H. tertio in com̃ Surrey de Gylbert̃ de Albyngewerth & Reginaldo de Brewese. [Qui quidē si sum̄onitus interesse noluerit, nihilominus p̄cedat p̄batio, & p̄bata defalta, ut p̃dictum est, redire debent ad com̃ tam petens quàm serviens. Et šviente (qui in hoc recordum habet) p̄bationem defaltæ attestante, tunc petat petens inde juditium, & ibi per juditium p̃cipietur, q̄ tenens sum̄oneatur q̄ sit ad alium com̃ inde petenti responsurus. Ad quem diem si uterq̄ comparuerit, p̄cedat loquela, si autem neuter, sed se essoniaverit, dabitur alius dies per essoñ, & idem erit si de altero ipsorum. Si autem nullus, vacua erit loquela, quamvis videatur q̄ compensari de-

[1] "reseantisam," MS. Rawl. C. 160.

assumed with himself honest and loyal men, he should forthwith apply to the court of the chief lord, if he have a court and has held a court, or if he have not a court, then to the place where he shall have had a residence, provided this be in that fee, where the land is which is claimed, and if he shall not have any of these, nor has done any of these things, then it is sufficient that he prove the default in whatever place he pleases upon that fee, according as the lord himself has had the choice of holding his court in whatever place he pleases upon that fee (since it is not of right allowable beyond it), and let the serjeant see if the court has made default to the claimant concerning the right, so that the lord has been unwilling or unable to maintain the right to him, and forthwith by the oath of the claimant himself, and two others whom the claimant has produced with himself, let the serjeant hear the proof of the default in the presence of the chief lord, if he wishes to be present in person or by a certain attorney, seneschal, or other bailiff, according to what may be found in Easter term and in Holy Trinity term in the third year of king Henry, in the county of Surrey, concerning Gylbert de Albyngewerth and Reginald de Brewese. Who indeed if on having been summoned he is unwilling to appear, nevertheless let the proof proceed, and on the default having been proved, as said above, both the claimant and the serjeant ought to return to the county court. And the serjeant (who has a record in this matter) attesting the proof of the default, then let the claimant seek judgment thereupon, and there it shall be enjoined by the judgment, that the tenant be summoned to be present at another county court in order to make answer thereon to the claimant. At which day if both appear, let the argument proceed, but if one of them does not appear, and he has essoined himself, another day shall be granted through the essoin, and it shall be the same in the case of either one of them. But if no one appears, then the argument will be void,

beat defalta cū defalta, ex quo tenens quietus per judicium non recessit. Si autem petente comparente tenens non comparuerit, præsentibus summonitoribus, & summonitiones testificantibus, ꝑcedatur contra ipsum ad defaltam, secundum diversam cōsuetudinem diversorum comitatuū, vel ꝑ captionem terræ in manum domini regis, vel alio modo. Et secundum ꝙ in comitatu Lancastr̃ observatur, & quæ consuetudo ab M. de P. commendata fuit & approbata, & quæ talis fuit: quod si tenens ad primam summonitionem non veniret, tunc præsentibus summonitoribus & summonitionem testificantibus, per considerationem comitatus summoneatur secundò, ꝙ sit ad alium comitatum, ad quem si non venerit præsentibus summonitoribus &c. ut prius, ꝑ cōsiderationem comitatus capiatur parvum nāpium de eadem terra nomine districtionis, & tenens summoneatur tertiò, ꝙ sit ad tertium comitatum, ad quem si non venerit, capiatur magnum nampium de eadem terra, scilicet averia & catalla in duplum pro aforciamento districtionis, & tenens quartò sum̄oneatur quòd sit ad quartum com̃, ad quem si non venerit, per cōsiderationem com̃ capietur terra in manum domini regis, & tenens quintò sum̄oneatur, ꝙ sit ad quintum com̃, ad quem si non venerit, nec terra petita sit ꝑ plevinā, petens seysinā suā recuperabit ꝑ defaltā, nec poterit tenens se defendere contra recordum com̃ per legem, defendendo summonitionem & sursisas.

Consuetudo Lancastr̃.

2. De processu in comitatu

Fit etiam processus hujusmodi post defaltam probatam pluribus aliis modis & diversis, secundum diversitatem comitatuum, quia post probationem defaltæ,

although it would seem that the default of one ought to be compensated by the default of the other, since the tenant has not gone away acquitted by the judgment. But if upon the claimant appearing the tenant has not appeared, the summoners being present and attesting their summonses, let proceedings go on against him by default according to the different custom of different counties, either by the taking of his land into the hand of the lord the king, or in some other manner. And according to what is observed in the county of Lancaster, and which was commended and approved by Martin de Pateshull, and which was of this kind, that if the tenant did not come at the first summons, then upon the summoners being present and attesting the summons, upon a resolution of the county court let him be summoned a second time, that he attend at another county court, at which if he be not present the summoners being present &c. as before, upon a resolution of the county court let a little naam be taken of the same land in the name of a distress, and let the tenant be summoned a third time that he be present at a third county court, at which if he be not present, then let a great naam be taken of the same land, to wit, beasts and chattels to a double amount to enforce the distress, and let the tenant be summoned a fourth time that he be present at a fourth county court, at which if he be not present, upon a resolution of the court his land shall be taken into the hand of the king and let the tenant be summoned a fifth time, that he be present at a fifth county court, at which if he be not present, and the land be not claimed by a plevine, the claimant shall recover his seysine by default, nor can the tenant defend himself against the record of the county court by his law, by denying the summonses and the adjournments.

2. Of the proceeding in the county

A proceeding of this kind is had after the default has been proved in several and divers other ways according to the diversity of the counties, because after proof of the

f. 330 b. post defaltam curiæ probatam. Britton, vi. ch. iv. § ii.

faciet serviens hundredi incontinenti sum̄onitionē vel assidet partibus diē (si præsenť fuerint) ad ꝑximū com̃, & semꝑ stabiť ejus recordo cum testimonio ꝑborum hominum qui p̃sentes fuerint, & de sum̄onitione facta, & die dato, & ad quem si tenens non venerit, se ꝑ legem non defendet contra recordum servientis. Stabitur etiam ejus recordo, si in curia regis contentio habeatur, utrū loquela fuerit in curia capitalis domini, vel in comitať, vel si facta fuerit ꝑ eum sum̃onitio vel non, ut de itinere W. de Ralegh in com̃ Warř.

3. Quando loquela incipit esse in comitatu.

Et quamvis quidam sic dicant, q̄ statim post sum̄onitionem factam ꝑ švientem, incipit loquela esse in comitatu, tamen non est ita, nisi tunc demùm cum serviens p̄sens fuerit in comitať & testatus fuerit ꝑbationem defaltæ & summonitionē, & cum ita fuerit loquela in com̃, sine calumnia domini capitalis, sive tenens se essoniaverit sive non, capitalis dominus curiam suam nunquam rehabebit, sive tenens in com̃ se essoniaverit sive non. Ex tunc enim vel statim poterit loquela ad magnā curiam dom̃ regis ꝑ pone transferri, vel in com̃ terminari, & unde, cùm multotiens contingat, q̄ petens per fraudem dicit q̄ curia de recto ei defecerit, cùm fortè loquela nunquā fuerit in curia dom̃ capitalis, & cùm ipse dom̃ paratus esset ei rectum tenere, ipse petens ad comitať convolavit. Et quo ꝑbato esset curia domino capitali restituenda, si illam ad horam petierit, oportet q̄ illam petat hora congrua,

default, the serjeant of the hundred shall make forthwith a summons or shall assign to the parties a day (if they be present) at the next county court, and reliance shall always be placed on his record with the testimony of honest men who were present, both concerning the summons having made and a day assigned, and upon which day if the tenant has not come, he shall not defend himself by his law against the record of the serjeant. Reliance shall also be placed on his record, if the contention is held in the court of the king, whether the argument has been in the court of the chief lord, or in the county court, or whether or not a summons has been made by him, as in the iter of William de Ralegh in the county of Warwick. f. 330 b. court after proof of the default of the lord's court.

And although some persons say thus, that immediately after the summons has been made by the serjeant, the argument begins to take place in the county court, nevertheless it is not so, unless then indeed when the serjeant is present in the county court and has attested the proof of the default and the summons, and when thus there has been an argument in the county court, without any charge against the chief lord, whether the tenant has essoined himself or not, the chief lord shall never have again his court, whether the tenant has essoined himself or not. For from that time either the argument may be transferred by a *pone* to the great court of the lord the king, or be determined in the county court, and hence when it oftentimes happens that the claimant fraudulently declares that the court has failed him in a plea of right, when perhaps there has never been an argument in the court of the chief lord, and when the lord himself was prepared to maintain his right, the claimant himself has hastily had recourse to the county court. And upon proof of this the court will have to be restored to the chief lord, if he has claimed it at the proper hour, and it is incumbent that he claim it at a suitable hour, before there has been an argument in the county court, to wit, 3. When the argument commences to be in the county court.

antequam loquela fuerit in comitat̃, scilicet tertio die inclusivè, ne si diem com̃ attenderet, superveniret p̱testatio p̱bationis defaltæ, & summonitionis per recordum servientis, vel essonium tenentis, & postea breve de ponendo loquelam ad magnam curiam, quia sic non esset curia petita ad horam.

## Cap. V.

1. Cum loquela fuit in comitatum translata.

Probata sic defalta & per servientem testata, & similiter summonitione, sic incipit placitum de recto esse in comitatu, & ubi in essoñ de malo veniendi ita fieri debet sicut fit in curia domini regis, nisi ex consuetudine & ex jure antiquo aliter observetur.

2. De modo procedendi in placito de recto f. 331. cum fuerit in comitatu, et de forma diversorum brevium.

De essonio vero de malo lecti ita fiat, secundum quod inferius videri poterit de essoniis, si in comitatu. De visu vero habendo & de exceptionibus, & replicationibus, fiat sicut inferiùs dicetur, & eodem modo. Si autem vocetur warrantus in comitatu, non habebit comitatus potestatem sum̄onendi warrantum ad warrantizandum sine speciali præcepto dom̃ regis, quo casu recurrendum erit ad curiam p̱ breve de warrantia, quod tale erit.

3. Si in comitatu vocetur warantus.

Rex vicecom̃ salutem. Præcipe tali, q̱ justè &c. warrantizet tali tantā terrā cum p̱tinentiis in tali villa, quam talis Titius in curia nostra clamat esse jus suum, & unde &c. ut infra inter brevia de warrantia. Et nisi fecerit, q̱ sit in adventu justic' &c. & unde si in comitatu warrantizaverit, bene erit, si autem non, tunc dabitur dies partibus in adventu justiciariorum, ubi

on the third day inclusively, lest if he wait for the day of the county court, there should arrive a protestation of the proof of the default, and of the summons by the record of the serjeant, or an essoin of the tenant, and afterwards the writ of transferring the argument to the great court, because so the court would not have been claimed at the proper hour.

## Chapter V.

1. When the argument has been transferred to the county court.

The default having been thus proved and attested by the serjeant, and in like manner the summons, the plea of right then begins to be in the county court, and where in an essoin of sickness on the way it ought to be done just as it is done in the court of the lord the king, unless from custom and ancient right it is otherwise observed.

2. Of the mode of proceeding in a plea of right, when it has been in the county court, and of the form of diverse writs. f. 331.

But concerning an essoin of bed-sickness let it be done according to what may be seen below concerning essoins, if it be in the county court. But concerning holding a view and concerning exceptions and replications, let it be done as will be explained below, and in the same manner. But if a warrantor should be called in the county court, the county court shall not have the power of summoning a warrantor to warrant without a special precept from the lord the king, in which case recourse must be had to the court by a writ of warranty, of which the form shall be such.

3. If a warrantor be called in the county court.

The king to the viscount greeting. Enjoin so-and-so, that justly &c. he warrant to such an one so much land with its appurtenances in such a vill, which a certain Titius in our court claims to be his right, and whereof &c. as below amongst writs of warranty. And unless he do so, that he should be present at the arrival of our justiciaries, &c., and whereof if he has warranted in our court, it shall be well; but if not, then a day shall be given to the parties at the arrival of our justiciaries,

terminabitur p̄ tale br̄e placitū de warrantia, & cùm warrātizaverit, remittetur loquela principalis iterū ad com̄, & ibi terminabitur, si justiciarii hoc voluerint. Poterit tamē utraquè corā eis de gratia terminari, si voluerint, etiam sine pone. Et si warrantus infra ætatem fuerit, remanebit principale placitum in suspenso in comitatu & placitum de warrantia coram justiciariis, quousque warrantus ætatem habuerit, q̄ ad warrantiam respondere poterit.

4. Si tenens se posuerit in magnam assisam in comitatu.

Si autem tenens p̄ duellum in comitatu se defendere voluerit, tunc fiat eodem modo in essoniis & aliis, sicut fit infra de duellis. Cùm autē tenens se posuerit in magnā assisam in comitatu, dabitur ei dies usq̄ ad alium comitat̄, infra quem sibi p̄quirere debet breve de pace usquè ad adventum justiciariorum, quod quidem facere non possit p̄ interpositam personam, cùm in p̄pria persona jurare teneatur q̄ tenens est, & q̄ se in comitatu posuerit in assisam, q̄ si infra comitatum sibi non perquisiverit, vel essoniatus non fuerit, sed defaltam fecerit, amittere poterit p̄ defaltā, salvo ei quòd habeat recuperare suū, quale habere debebit. Et eodem modo faciat petens ex parte sua, perquirat sibi breve de summonendo magnam assisam coram justiciariis ad eundem terminum, secundum q̄ inferiùs dicetur.

5. Breve de pace usque ad adventum justitiariorum.

Rex vicecom̄ salutem. Prohibemus tibi, ne teneas placitum quod est in comitatu tuo inter A. petentem & B. tenentē de tanto terræ cum p̄tinentiis in N. quod idem A. clamat versus prædictum B. p̄ breve nostrum de recto, nisi duellum inde fuerit vadiatum, quia idem

when the plea of warranty shall be determined by such a writ, and when he has warranted, the principal argument shall be remitted again to the county court, and there shall be determined, if the justiciaries so will. But both pleas may be determined by favour before them, if they are willing, even without a *pone*. And if the warrantor be under age, the principal plea shall remain in suspense in the county court and the plea of warranty before our justiciaries, until the warrantor has full age, so that he may be able to answer to the warranty.

4. If the tenant has put himself upon a great assise in the county court.

But if the tenant is desirous to defend himself by battle in the county court, then let it be done in the same manner in the essoins and other matters, as is done below concerning battle. But when the tenant has put himself upon a great assise in the county court, a day shall be granted to him until another county court, within which he ought to procure for himself a writ of peace until the coming of the justiciaries, which indeed he cannot do through the interposition of a person, since he is bound to swear in his own person that he is the tenant, and that he has in the county court put himself upon an assise, but if within the county court he has not procured for himself a writ, or has not been essoined, but has made default, he may lose by default, saving to him that he should have his recovery such as he ought to have. And in the same way let the claimant do of his own part, let him procure for himself a writ of summoning a great assise before the justiciaries for the same term according to what shall be said below.

5. A writ of peace until the coming of the justiciaries.

The king to the viscount greeting. We prohibit you, that you should not hold a plea, which is in your county court, between A. the claimant and B. the tenant concerning so much land with its appurtenances in N. which the said A. claims against the aforesaid B. by our writ of right, unless battle has been wagered thereon, because

B. (qui tenens est) posuit se in magnam assisam nostram, & petit recognitionem fieri uter eorum majus jus habeat in terra illa. Et sic fiat de omnibus aliis assisis, secundum quod videri poterit in magnis assisis inferiùs. Si autem placitū de recto fuerit in curia alicujus, tunc fiat ꝑhibitio custodi, vel ballivo, ꝑ tale breve.

6. Prohibitio custodi.

Rex vicecom̃ salutem. Prohibe ballivo, vel custodi terræ & hæredis A. ne teneat placitū, quod est in curia ejusdē custodis, vel ballivi de tali honore &c. ut supra. Vel si ꝑhibitio fieri debeat dom̃ curiæ, tunc sic. Prohibe A. ne teneat placitum in curia sua inter A. petentem & B. tenentē de tanto terræ cum ꝑtinētiis in N. quod idē A. clamat versus eundem B. ꝑ breve nostrum de recto &c. Si autem placitum fuerit inter aliquos in comitatu de servitiis & consuetudinibus per breve de recto patens, quod dicitur, prohibemus; vel per breve de justiciando aliquem ad faciendum recta servitia & consuetudines, & tenens se posuerit in magnā assisam (q̃ bene poterit) habebit breve de pace vicecom̃ quod tale erit.

f. 331 b.

7. Si placitum fuerit in comitatu de consuetudinibus et servitiis.

Rex vicecomiti salutem. Prohibemus tibi, ne teneas placitum quod est in comitatu tuo inter A. petentem, & B. tenentē vel defortiantē, de cōsuetudinibus & s̄vitiis quæ prædictus A. exigit de p̃dicto B., per breve nostrum de tanto terræ cum pertinentiis in tali villa, nisi duellum inde vadiatum fuerit, quia idem B. (qui tenens est) posuit se in magnā assisam nostram, & petiit recognitionem fieri utrum debeat p̃dicto A. de p̃dicto tenẽto tale s̄vitium & tale tantum per aīum pro omni s̄vitio sicut ei recognoscit: an idem servitium, & p̃terea tale, & tale, sicut idem A. ab eo exigit. Teste &c.

the said B. (who is the tenant) has put himself upon our great assise, and prays a recognition to be made which of them has the greater right in that land. And let it be thus done with all other assises, according to what may be seen in great assises below. But if there be a plea of right in any person's court, then let there be a prohibition to the guardian or the bailiff by a writ of this kind.

6. A prohibition to a guardian.

The king to the viscount greeting. Prohibit the bailiff or the guardian of the land and the heir of A. from holding a plea, which is in the court of the said guardian or bailliff, concerning such an honour &c. as above. Or if the prohibition ought to be issued against the lord of the court, then thus: Prohibit A. not to hold a plea in his court between A. a claimant, and B. a tenant, concerning right &c. But if there be a plea between certain persons in the county court concerning services and customs by an open writ of right, which is called "prohibemus," or by a writ to adjudge some one to perform rightful services and customs, and the tenant has put himself on a great assise (which he may well do), he shall have a writ of peace to the viscount of this kind. f. 331 b.

7. If there be a plea in the county court concerning customs and services.

The king to the viscount greeting. We prohibit you from holding a plea, which is in your county court, between A. the claimant and B. the tenant or disturber, concerning customs and services, which the aforesaid A. exacts from the aforesaid B., by our writ concerning so much land with its appurtenances in such a vill, unless battle has been wagered thereon, because the said B. (who is the tenant) has put himself upon our great assise, and has prayed a recognition to be made whether he owes to the aforesaid A. from the aforesaid tenement such a service and such only yearly for all service as he acknowledges to him, or the same service and in addition such and such service, as the said A. exacts from

Et variať istud breve multotiens secundum varietatem švitiorum. Contingit quandoq̃ q̣ ille qui se posuerit in magnam assisam de švitiis & consuetudinibus, postquā sibi pquisiverit breve de pace usquè ad adventū justiciariorum, interim nihilominùs distringitur pro eisdem servitiis per dominū capitalem, & quo casu consulitur ei per breve quod tale est.

8. Si ille, qui se posuerit in magnam assisam de servitiis et consuetudinibus et habuerit breve de pace, distringatur a domino suo pendente placito.

Rex vicecomiti salutem. Ostendit nobis talis, quòd cùm tulerit tibi breve nostrum de pace habenda usq̃ ad adventum justiciariorum ad partes illas de švitiis & consuetudinibus quas talis ab eo exigit, & quas ei non cognoscit, & unde posuit se in magnam assisam nostram corā te in coñ tuo, idem talis nihilominùs distringit eum pro eisdem servitiis & consuetudinibus quas ei non cognoscit, et in aliis gravis existit eidem & injuriosus. Et ideo tibi p̃cipimus, q̣ non permittas de cætero quod prædictus talis distringat ipsum talem pro eisdem servitiis et consuetudinibus, ita q̣ p̃dictâ occasione de cætero ei molestiam inferat vel gravamen. Et ita te habeas in hoc negotio &c. Teste &c.

9. Breve de pace, ubi terra petita teneri debet in gavelkind.

Rex vicecomiti salutem. Prohibemus tibi ne teneas placitum, quod est in comitatu tuo inter talem et talem &c. ut supra, nisi duellum &c. quia idem talis qui tenēs est, posuit se in juratā loco magnæ assisæ p̣visam et concessā, et petiit recognitionem fieri uter eorum majus jus habeat in terra illa. Teste &c. Et notandum est quòd omnia brevia de pace sic fiunt, ut supra: vel sic: vel q̣ sit p̣hibitio vicecomiti ne teneat, vel vicecomiti quòd aliis prohibeat, sicut dominis, custodibus, vel ballivis, ne ipse[1] teneant placitum quod est in curia eorum &c. ut supra. Et sciendum q̣ omnia brevia de pace irrotulari debent in rotulo de cācellaria.

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[1] "ipsi".MS. Rawl. C. 160.

him. Witness &c. And that writ varies in manifold ways according to the variety of the services. It happens sometimes that he, who has put himself upon a great assise concerning services and customs, after he has procured for himself a writ of peace until the coming of the justiciaries, is nevertheless in the meanwhile distrained for the same services by the chief lord, in which case he is aided through a writ, which is of this kind.

8. If he, who has put himself upon a great assise concerning customs and services, and has had a writ of peace, is distrained by his lord, pending the plea.

The king to the viscount greeting. So-and-so has shown to us, that when he has delivered to you our writ for keeping the peace until the coming of our justiciaries to those parts, concerning the services and the customs which so-and-so exacts from him, and which he does not acknowledge to him, and in other respects aggrieves and injures him. And therefore we enjoin you that you do not permit henceforth that so-and-so aforesaid should distrain the said such-an-one for the same services and customs, so that on the aforesaid pretext he should henceforth cause him trouble and grievance. And so conduct yourself in this business &c. Witness &c.

9. A writ of peace, when the land claimed ought to be held in gavelkind.

The King to the Viscount greeting. We prohibit you to hold a plea, which is in your county court, between so-and-so and so-and-so, &c. as above, unless battle &c., because the said so-and-so, who is the tenant, has put himself upon a jury provided and conceded to him in the place of a great assise, and has prayed a recognition to be made which of the two has the greater right in that land. Witness &c. And it is to be noted that all writs of peace are to be drawn up as above, or thus: either that there be a prohibition to the viscount not to hold, or to the viscount that he prohibit others, such as lords, guardians, or bailiffs, that they should not hold a plea which is in their court &c. as above. And it is to be known that all writs of peace ought to be enrolled in roll of the chancery.

10. Quod tenens, qui se posuerit in magnam assisam, cum breve de pace habuerit, perquirat sibi petens de arramando magnam assisam coram justiciariis in adventu ipsorum.

Cùm autem tenens hujusmodi breve de pace sibi perquisiverit, statim debet petens aliud sibi perquirere, scilicet de magna assisa coram justiciariis in eorum adventu arramanda, & per quod summoneantur quatuor milites ad eligendum duodecim ad faciendam assisam illam, in hac forma.

11. Breve de eodem de assisa arramanda. f. 332.

Rex vicecomiti salutem. Summoneas per bonos summonitores quatuor legales milites de comitatu tuo, quòd sint coram justiciariis nostris ad primam assisam cùm in partes illas venerint, ad eligendum super sacramentum suum duodecim de legalioribus militibus de visneto tali, qui meliùs sciant & velint veritatem dicere, ad faciendam recognitionē magnæ assisæ nostræ inter talē petentem & talem tenentem, de tanto terræ cum pertinentiis in tali villa, quia idem talis (qui tenens est) posuit se in magnā assisam nostram, & petit recognitionem fieri uter eorum majus jus habeat in terram illam. Et sum̄oneas p̱ bonos sum̄onitores p̃dictum talem &c. quòd tunc sit ibi auditurus illam electionem, & habeas ibi nomina militum & hoc breve. Teste &c. Et sciendum q̱ variantur hujusmodi brevia secundū varietatem assisarum, secundum q̱ videri poterit infra de assisis.

12. De assisa arramanda, cum placitum de recto fuerit de servitiis et consuetudinibus.

Rex vicecom̃ salutem. Sum̄oneas per bonos sum̄onitores quatuor legales milites de comitatu tuo &c. ut supra, ad faciend' recognitionem magnæ assisæ nostræ inter A. petentem & B. deforciantem de consuetudinibus & s̃vitiis quæ idem A. exigit à p̃dicto B. de tanto terræ cum pertinentiis in tali villa. Et unde idem B. (qui tenens est) posuit se in magnam assisam nostram, & petiit recognitionem fieri utrum debeat p̃dicto A. de p̃dicta terra tale s̃vitium, vel tale[1] tantum per aīum p̱ omni s̃vitio sicut ei recognoscit, an idem servitium,

[1] "et tale," MS. Rawl. C. 160.

10. That when the tenant, who has put himself upon a great assise, has obtained a writ of peace, the claimant should procure for himself a writ to prepare a great assise before the justiciaries at their coming.

But when the tenant has procured for himself a writ of peace, the claimant should forthwith procure for himself another writ, to wit, about preparing a great assise before the justiciaries at their coming, and through which four knights should be summoned to elect twelve knights to make that assise in this form:

The king to the viscount greeting. Summon by good summoners four lawful knights of your county, that they attend before our justiciaries at their first assise, when they have come into those parts, to choose upon their oath twelve of the more loyal knights of that neighbourhood, who know well and can speak the truth, to make a recognition of our great assise between so-and-so the claimant and so-and-so the tenant concerning so much land with its appurtenances in such a vill, because the said so-and-so (who is the tenant) has put himself upon our great assise, and prays a recognition to be made which of them has the greater right to that land. And summon by good summoners so-and-so aforesaid, &c., that he be there in order to hear that election, and have there the names of the knights and this writ. Witness &c. And it is to be known that writs of this kind are varied according to the varieties of the assises, according to what may be seen below concerning assises.

11. A writ concerning the same for preparing a great assise. f. 332.

12. Of preparing an assise, when the plea of right shall be concerning services and customs.

The king to the viscount greeting. Summon by good summoners four loyal knights of your county &c., as above, to make a recognition of our great assise between A. the claimant and B. disturbing him from certain customs and services, which the said A. exacts from the aforesaid B. concerning so much land with its appurtenances in such a vill. And whereon the said B. (who is the tenant) has put himself upon our great assise, and has prayed a recognition to be made whether he owes to the aforesaid A. from the aforesaid land such a service and such only yearly for all services as he acknowledges to

& p̃terea tantū, sicut idem A. ab eo exigit. Et summoneas &c. ut supra.

13. Breve de assisa arramanda in jurata de gavelkynde loco magnæ assisæ.

Rex vicecom̃ salutem. Sum̄oneas &c. quatuor legales homines de com̃ tuo qui teneant in gavelkynd, q̄ sint corā justiciariis nostris &c. (ut supra) ad eligend' super sacramentum suum xii. de legalioribus hominibus de visneto tali, qui teneant in gavelkynd, et qui meliùs sciant et velint veritatem dicere, ad faciendā juratam loco magnæ assisam p̄visam et concessam, inter tales &c. ut supra. Et sum̄oneas &c. et habeas &c.

14. Qualiter removetur placitum de comitatu ad magnam assisam per breve, quod dicitur pone.

Et tali modo p̄cedat placitum de recto in com̃, nisi fortè sit aliquis capitalis dominus, ut p̃dictum est, qui curiā suam ad horā petierit antequàm placitum fuerit in com̃, vel fortè cùm in comitatu fuerit perquirat sibi petens de ponendo loquelam illam ad magnam curiam per breve q̄ vocatur (pone), et quod tenenti de facili non conceditur, nisi ex causa necessaria in brevi exprimenda.

15. Pone ad petitionem petentis.

Rex vicecom̃ salutem. Pone ad petitionē petent̃ coram justiciariis nostris apud Westm̃ tali die loquelā, quæ est in com̃ tuo per breve de recto inter A. petentē et B. tenentē de tanto terr̄ cum pertinētiis in tali villa, vel sic: exceptis tot acris &c. Et sum̄oneas &c. p̃dictum B. q̄ tunc sit ibi præfato A. inde responsurus, et habeas ibi summonitores et hoc breve. Teste &c.

16. Pone ad petitionem tenentis de consuetudinibus et servitiis.

Rex vicecom̃ salutem. Pone ad petitionem petētis coram justiciariis nostris apud W. tali die loquelam quæ est in comitatu tuo p̄ breve nostrum inter A. petentem et B. deforciantem de consuetudinibus & s̄vi-

him, or the said service and so much besides, as the said A. exacts from him. And summon &c. as above.

13. A writ for preparing an assise in a jury of gavelkind in the place of a great assise.

The king to the viscount greeting. Summon &c. four loyal men of your county, who hold in gavelkind, that they appear before our justiciaries &c. (as above) to choose upon their oath twelve of the more loyal men of such a neighbourhood, who hold in gavelkind, and who know well and are willing to say the truth, to make up a jury provided and conceded in the place of a great assise, between such and such persons &c. as above. And summon &c. and have &c.

14. How a plea is removed from the county court to the great court by a writ, which is called a "pone."

And in this way let a plea of right proceed in the county court, unless by chance there is some chief lord, as said above, who has claimed his court early before a plea has been admitted in the county court, or perchance when it has been admitted in the county court, the claimant has procured for himself a writ to remove the argument into the great court by a writ which is called a "Pone," and which is not allowed to the tenant easily, except from a cause of necessity, to be expressed in the writ.

15. A "pone" at the prayer of the claimant.

The king to the viscount greeting. At the petition of the claimant put before our justiciaries at Westminster on such a day the argument, which is in your county court, by a writ of right between A. the claimant and B. the tenant, of so much land with its appurtenances in such a vill, or thus, excepting so many acres &c. And summon &c. the aforesaid B. that he be there to answer thereon to the aforesaid A., and have there the summoners and this writ. Witness &c.

16. A "pone" at the prayer of a claimant for customs and services.

The king to the viscount greeting. At the prayer of the claimant put before our justiciaries at Westminster on such a day the cause, which is in your county court by our writ between A. the plaintiff and B. who withholds from him customs and services, which the said A.

tiis, quæ idem A. exigit de p̃dicto B. de libero teñto suo, quod de eo tenet in tali villa etc. Et summoneas etc. p̃fatum B. quòd tunc sit ibi præfato A. inde responsurus, et habeas ibi summonitores, et hoc breve et aliud breve. Teste etc. Et ideo dicit (aliud breve), ut si placitum fuerit in comitatu per aliquod breve clausum inter aliquos de debito, vel de alia re, et ita quòd non sit patens, et quod quidem remanere debet penes petentem. Sed esto, quòd tenens warrantum vocaverit in comitatu antequàm loquela posita fuerit coram justiciariis de banco, et ita quòd warrantus diē habeat coram justiciariis itinerantibus, quia statim ad p̃ceptum vicecomitis non warrantizavit, nunquā fiet mētio in pone de warrāto? Non, quia in curia dm̃i regis post essonia et dilationes incipiet petēs narrare versus tenētem, ex quo warrātus in comitatu nondum warrantizavit, & ipse tenēs tunc incipiat de novo war-
332 b. rantum vocare, & dies datus corā justic' itinerantibus nullus erit, & locum non tenebit. Raro autē fit hoc breve (pone) ad petitionem tenētis, ut prædictum est, nisi ex causa, quæ multiplex esse poterit, ut si tenens longè agens fuerit in partibus transmarinis, vel ita impotens sui q̃ comparere non possit in comitatu, vel vice versa, si petens sit vicecom̃ parentela conjunctus, s̃viens, vel multum familiaris, vel sit valde potens, & vicecomes de com̃, & fit tale (pone) sic cū causa expressa.

17. Pone ad petitionem tenentis et ex causa.

Rex vicecom̃ salutem. Pone ad petitionem tenentis, eo q̃ agit in partibus transmarinis, vel eo quòd petens est amicus, vel familiaris vicecomiti, & hujusmodi, coram justic' nostris ad talem diem loquelam quæ est

requires from the said B. in respect of his free tenement, which he holds in such a vill &c., and summon &c. the aforesaid B. that he be there to answer thereon to the aforesaid A., and have there the summoners and this writ and any other writ. Witness &c. And for this reason it says "any other writ," that if there has been a plea in the county court by a close writ between some persons for debt or for some other matter, and so that it is not an open writ, and that it ought indeed to remain in the possession of the plaintiff. But let it be that the tenant has called a warrantor in the county court before the cause was put before the justiciaries of the bench, and so that the warrantor may have a day before the justiciaries itinerant, because he has not forthwith warranted at the precept of the viscount, shall mention of the warrantor never be made in the "Pone?" No, because in the court of the lord the king after the essoins and adjournments the claimant will begin to plead against the tenant, since the warrantor has not yet warranted in the county court, and let the tenant himself begin anew to call a warrantor, and the day given before the justiciaries itinerant shall be null and shall have no place. But this writ of "Pone" is seldom issued at the prayer of the tenant, as has been said above, except from a cause which may be of many kinds, as if the tenant has been long employed in parts beyond the sea, or so little master of himself that he cannot appear in the county court, or conversely if the claimant is connected by relationship to the viscount, or if he is his servant or a member of his household, or if he be very powerful and the viscount of the county, and let the "Pone" be of this kind with the cause expressed.

17. A "pone" at the prayer of the tenant and for a cause.

The king to the viscount greeting. At the prayer of the tenant, on the ground that he is employed in parts beyond the sea, or on the ground that the claimant is a friend or a member of the family of the viscount, and such like, put before our justiciaries on such a day the

in comitatu tuo p breve nostrum de recto, inter A. petentem & B. tenentem de tanto terræ cum pertinentiis in tali villa. Et dic prædicto A. q tunc sit ibi loquelam suam versus prædictum B. psecuturus, si voluerit. Et habeas ibi hoc breve. Teste &c. Et notandum, quòd si tenens quacunq de causa pquisiverit suum (pone) coram justiciariis, & primo die coram eis defaltam fecerit, oportet eum wayvare[1] suum (pone) vel amittet p defaltam. Item esto q petens defaltam fecerit primo die cùm (pone) suum pquisiverit; & cùm tenēs se essoniaverit, recesserit essoniator sine die, non poterit petēs ulterius p aliud (pone) resumere placitum suum, & illud iterum transferre de comitatu ad magnam curiam, quia in comitatu nullum est placitum ex quo inde semel translatum est: ut de termiñ Paschæ añ regni regis H. nono in coñ Hunt de Wilhelm Hatechrist & Roberto de Washingley.[2] Et unde idē Robert (qui tenēs fuit) recessit sine die de placito illo, quod translatum fuit a comitatu p secūdum pone, & ideo placitum de novo reincipiendum. Transfert etiam loquela ad magnam curiam ad petitionem petentis ex necessitate ppter privilegium tenētis, quale habēt Templarii, & Hospitalarii, & alii plures, q non respondeāt de aliquo placito, nisi corā ipso rege, vel ejus capitali justic', qui etsi aliquando contra privilegium suum intraverint in responsum, ex pœnitentia resilire non possunt; ut de itinere abbatis de Radyng & M. de Pateshul in coñ Wygorñ añ regni regis H. quinto. Transfertur etiam generaliter quælibet loquela de coñ per necessitatem, s. ubi comi-

Britton, vi. ch. iv. § 17.

[1] "wayviare," MS. Rawl. C. 160.

[2] "Wassyngelegh," MS. Rawl. C. 160.

cause which is in your county court by our writ of right between A. the claimant and B. the tenant of so much land with its appurtenances in such a vill. And say to the aforesaid A. that he be there to prosecute his cause against the aforesaid B. if he wishes, and have there this writ. Witness &c. And it is to be noted, that if the tenant for any cause whatever has procured his "Pone" before the justiciaries, and on the first day has made default before them, he must waive his "Pone," or he shall lose it by his default. Likewise let it be that the claimant has made default on the first day when he has procured his "Pone," and when the tenant has essoined himself, the essoiner has withdrawn without a day, the claimant cannot further by another "Pone" resume his plea, and transfer it again from the county court to the great court, because in the county court a plea is null from the time when it has been once transferred from it, as in Easter term in the ninth year of the reign of king Henry in the county of Huntingdon, concerning William Hatechrist and Robert de Washingley. And wherefrom the said Robert (who was the tenant) withdrew without a day concerning the plea, which had been transferred from the county court by a second "Pone," and accordingly the plea had to be recommenced anew. The argument is also transferred to the great court of necessity at the prayer of the claimant on account of a privilege of the tenant, such as the Templars, the Hospitallers, and several others have, that they should not answer upon any plea, except before the king himself or his chief justiciary, who also, if on any occasion contrary to their privilege they have entered upon an answer, cannot, if they should repent it, draw back: as in the iter of the abbot of Reading and Martin de Pateshull in the county of Worcester, in the fifth year of the reign of king Henry. For generally any plea is transferred from the county court of necessity, to wit, where the county court has not the power

tatus non habet potestatem terminandi placitum, ut si bastardia objiciatur, vel hujusmodi, & eodem modo ꝑpter difficultatem judic',[1] & multis aliis modis. Et eodem modo transferuntur loquelæ coram justitiaꝝ itinerantibus &[2] indifferenter, absq̃ eo q̃ aliquid detur pro (pone). Et eodem modo de curiis baronū. Et in fine notandum, q̃ in placito per parvum breve de dominicis doñ regis nullum fiat (pone). Transfertur etiam loquela à coñ ad curiam ꝑpter falsum judiciū, vel fatuum.

18. Ubi duellum vadiandum est contra consuetudinem regni.

Rex vicecoñ salutē. Pone corā justitiaꝝ nostris &c. duellū quod vadiatū est in coñ tuo inter A. querētem & talia hundreda, de quodā juditio eidē A. facto, de averiis captis & cōtra vadiū & plegium detētis, ut idem A. dicit. Et unde queritur q̃ duellum istud injustè & cōtra cōsuetudinem regni nostri vadiatum est. Et interim recordum illud unde prædictum duellum vadiatum fuerit fieri facias, & illud habeas corā præfatis justitiariis nostris ad p̃dictum diem ꝑ quatuor legales milites de coñ tuo qui recordo illi interfuerint. Et sum̄oneas &c. quatuor legales milites de coñ tuo, qui recordo illi interfuerint, & p̃terea quatuor legales milites de quolibet hundredorum p̃dictorum, qui tunc sint ibi aduturi recordum illud, & responsuri, & judicium recepturi, ꝑ p̃dictis hundredis. Et habeas ibi sum̄onitores, nomina militum, & hoc breve. Teste &c. Et sunt hujusmodi formæ infinitæ secundum diversitatem placitorum.

f. 333.

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[1] "judicii," MS. Rawl. C. 160. | [2] "et" omitted MS. id.

of terminating the plea, as if bastardy be objected, or such like, and in the same way on account of the difficulty of the judgment, and in many other ways. And in the same way arguments are transferred before the justiciaries itinerant, and indifferently, excepting that something is given for the "Pone." And in the same way from the courts of the barons. And finally it is to be noted, that in a plea by a petty writ concerning the domains of the lord the king no "Pone" may issue. The cause is also transferred from the county court to the (great) court on account of a false or fatuous judgment.

18. Where battle is to be waged against the custom of the realm.

The king to the viscount greeting. Put before our justiciaries &c. a duel which has been waged in your county between A. complaining and certain hundreds concerning a certain judgment done to the said A. concerning beasts seized and detained against a surety and bail, as the said A. alleges. And whereof he complains that a duel has been waged unjustly and against the custom of our realm. And in the meantime cause to be made a record of the circumstances whereupon the aforesaid duel has been waged, and have that before our aforesaid justiciaries on the aforesaid day with four loyal knights of your county who took part in that record. And summon &c. four loyal knights of your county, who took part in that record, and besides four loyal knights from any of the aforesaid hundreds, who should be there in order to hear that record, and in order to make answer, and in order to receive judgment on behalf of the aforesaid hundreds. And have there the summoners, the names of the knights and this writ. Witness &c. And forms of this kind are infinite according to the diversity of pleas. f. 333.

## Cap. VI.

1. De diversitate et divisione summonitionum.

Translata ad magnā curiam ad petitionem petentis quæ incepta est ꝑ breve de recto ꝑ pone, oportet q̄ sum̄oneatur tenens, q̄ sit ibi petenti inde responsurus. Et unde inprimis videndum est an sit sum̄onitus, & ideo de sum̄onitionibus aliquid dicatur. Et sciendum q̄ est sum̄onitio, & est post sum̄onitioñ aliquando captio in manum dom̃i regis p̃ defaltam, vel attachiamenť, secundum quod actio fuerit realis vel ꝑsonalis, secundum quòd inferiùs dicetur. Item est mandatum dñi regis sive præceptum sine alia sūmonitione, q̄ quis sit coram eo responsurus, vel aliquid facturus, vel q̄ quis sit & habeat talem ad respondend', vel aliquid faciendum. Item est p̃ceptū vicecom̃, quod faciat aliquē venire, vel attachiet, vel q̄ habeat corpus alicujꝰ, vel ita attachiet q̄ sit securus habendi corpus: secundum diversitatem sūmonitionum, & attachiamentorum, ut inferiùs dicetur de essoñ, & ubi aliquando sequitur essoñ, aliquando nō. Item sum̄oñ alia fit in actione reali tā in causa possessionis, q̄m in causa ꝑprietatis. Item alia in causa ꝑsonali, ubi s. aliqua ꝑsona obligatur in contractibus ad aliquid dandum vel faciendum, & in actionibus injuriarum.

2. De summonitione generali.

Item sum̄onitionum, alia generalis, alia specialis: generalis autem sive communis est, quæ tangit aliquam universitatem, sicut omnes de com̃, vel omnes alicujus civitatis, burgi, vel villæ, pro aliquo q̄ tangat

## Chapter VI.

1. Of the diversity and division of summonses.

Upon an argument which has been begun by a writ of right having been transferred at the prayer of a claimant to the great court by a "Pone," it is incumbent that the tenant be summoned to be present in order to make answer thereon to the claimant. And hence it is first to be seen, whether he has been summoned, and therefore something should be said about summonses. And it is to be known that there is a summons, and there is after a summons sometimes a seizure into the hand of the lord the king on account of a default, or an attachment, according as the action has been real or personal, according to what will be explained below. Likewise there is a mandate or precept of the lord the king without any other summons, that a person should present himself before him in order to make answer or in order to do something, or that a person should be present and produce a certain person to make answer or to do something. Likewise there is a precept to the viscount, that he cause some one to come, or that he attach him, or that he produce the body of some one, or that he attach him so that he should be sure to produce the body: according to the diversity of summonses and attachments, as will be explained below concerning essoins, and where sometimes an essoin follows, and sometimes not: and a different summons is made in a real action as well in a cause of possession as in a cause of property. Likewise a different summons is made in a personal action, where, for instance, any person is obliged in contracts to give something or to do something, and in actions of tort.

2. Concerning a general summons.

Likewise of summonses some are general, others special, but a general or common summons is that which touches some corporate body, as all the inhabitants of a county, or all the inhabitants of a city, a borough, or a

universitatem, sicut generalis sum̄onitio quæ fit ante iter justitiariorum & hujusmodi, quæ semper fieri debet in loco magis publico, & ideo dedici non poterit nec defendi, quia quod omnis de comitatu vel civitate sciverit vel cognoverit, unus vel plures hoc dedicere non possunt. Et talem generalem summonitionem sequuntur essonia, quæ quidem dicuntur essonia de communi summonitione, p̄ quæ defenditur quis, & ejus absentia, si ad primum diem cōmunis summonitionis non venerit, dum tamen veniat ad diem sibi datum ad warrantizandum essonium, & ita q̄ inde postmodum sine licentia non recedat.

3. De summonitione speciali.

Est etiam specialis summonitio, quæ sub generali continetur, & si quis de aliquo placito speciali sum̄onitus sit coram justitiariis, quo casu si primo die non venerit, nec se essoniaverit in placito speciali, erit in defalta, nec excusabitur, quàmvis de communi summonitione fuerit essoniatus, sed si in placito speciali, excusatur per essonium illud quantum ad com̄unem sum̄onitionem, quamvis de ea causa specialiter essoniatus non fuerit. Item videndum ubi specialis sum̄onitio fieri debeat, si ille qui summonitus est non inveniatur. Si autem inveniatur, fiat ei sum̄onitio ubicunq̄ inventus fuerit in domicilio suo vel extra, sub testimonio duorum ad minus, qui hoc (si opus fuerit) possint certificare & testificare. Si autem non fuerit inventus, non tenentur sum̄onitores eum ulterius quærere qu m ad domicilium suum, & in quo si fuerit inventus, fiat ei sum̄onitio ut p̄dictum est, vel familiæ suæ, ei denuncianda cùm venerit. Item si in comitatu plura habeat domicilia, potiùs fiat ei sum̄onitio ad domicilium ubi magis habitaverit, vel ubi majorem habuerit substantiā. Si autem domiciliū non habuerit,

f. 333 b.

Britton, vi. ch. v. § 3.

vill, in respect of something which touches the whole body, as a general summons which is made before the circuit of the justiciaries, and such like, which ought always to be made in a very public place, and therefore cannot be gainsaid nor denied, because what every person of a county or of a city has known and had cognisance of, one or more cannot gainsay it. And the essoins, which are called essoins of a general summons, follow such a general summons, by which a person is defended and his absence, if he has not come on the first day of the common summons, provided he has come on the day given to him to warrant his essoin, and so that afterwards he may not withdraw without a licence.

3. Concerning a special summons.

There is also a special summons, which is contained under the general summons, and if any one is summoned concerning a special plea before the justiciaries, in which case if he has not come on the first day, nor has essoined himself in the special plea, he will be in default, nor will he be excused, although he has been essoined on the general summons, but if he has been essoined in the special plea, he is excused by that essoin, as far as f. 333 b. regards the general summons, although he has not been specially essoined for that cause. Likewise it is to be seen, when a special summons ought to be made, if he who has been summoned is not found. But if he be found, let the summons be served upon him wherever he be found in his domicile or out of it, upon the testimony of two persons at least, who (if it be requisite) may certify and testify. But if he be not found, the summoners are not obliged to seek him further than at his own domicile, in which if he has been found, let the summons be served upon him as said above, or let it be served upon the household, to be announced to him, when he has come home. Likewise if he should have several domiciles in the county, let the summons rather be served upon him at the domicile where he most resides, or where he has his greater substance. But if he

nec dominicum in coñ, tunc si feodum habuerit, fiat summonitio ad feodum suum, & cùm ita qualitercunq̃ præventus fuerit sum̄onitione, non poterit se extra regnum transferre, ut p̱ hoc sibi acquirat dilationes de ultra mare, secundum quod inferiùs dicetur. Et quid si per sum̄onitionem sic p̃ventus extra regnum se transtulerit, & ad diem suum essoniatus fuerit de ultra mare, quæro (cùm non cōpetat tale essonium) an verti possit in essonium de malo veniendi, q̱ bene competeret, si ab initio se taliter essoniasset? & videtur primâ facie q̱ sic, quia si quis primò se essoniaverit de malo lecti, ubi se essoniasse debuit de malo veniēdi, ordine nō observato, vertitur essoñ de malo lecti in essoñ de malo veniendi, & qui facit id q̱ majus est, facit id quod minus est. Videtur igitur q̱ eadem ratio est in casu p̃misso, quòd essoñ de ultra mare vertitur in essoñ de malo veniendi, cùm sum̄onitus sum̄onitione sit p̃ventus sed non est idem in utroquè casu, quia in uno casu competit utrumq̃ essoñ, sed vertitur unum in aliud, propter ordinem non servatum. In alio verò casu non cōpetit nisi unicum tantum, s. essoñ de malo veniendi, i. de citra mare & non de ultra. Et unde cùm se essoniaverit de essoñ de ultra mare, q̱ non jacet, & non de essonio de citra, quod jacet, videtur (& verum est) quod carebit utroq̃, quia essonium q̱ non est non potest cadere in essonium quod non est, quamvis esse deberet.

4. Quis potest summonere.

Item videnḍ quis summonere possit, & sciendum q̱ omnis qui habet jurisdictionem & potestatē judicandi

should not have a domicile, nor a domain in the county, then if he should have a fee, let the summons be made at his fee, and when the summons has thus reached him in some way or other, he cannot transfer himself out of the realm, so as to be able for that reason to acquire delays as being beyond the sea, according to what will be explained below. And what if, after the summons has thus reached him, he has transferred himself out of the realm and on his day has been essoined as being beyond the sea, I ask, since he is not entitled to such an essoin, whether it can be turned into an essoin of illness in coming, to which he would be well entitled, if he had so essoined himself from the commencement? and it seems at first sight he may do so, because if a person has in the first place essoined himself on account of bed-sickness, when he ought to have essoined himself for illness in coming without any observation of order, the essoin of bed-sickness is turned into an essoin for illness in coming, and he who does that which is more, does that which is less. It seems therefore that the same reason holds in the case above mentioned, that an essoin of absence beyond the sea is turned into an essoin of illness in coming, when the party summoned has been seised with the summons, but it is not the same in both cases, because in one case both essoins are allowable, but one is turned into the other on account of due order not having been observed. But in the other case a single essoin alone is allowable, to wit, an essoin of sickness in coming, that is, within the sea and not beyond the sea. And hence, when he has essoined himself with an essoin of being beyond the sea, which does not lie, and with an essoin of being within the sea, which does lie, it seems (and it is true) that he shall be deprived of both, because an essoin, which is not, cannot fall into an essoin, which is not, although it ought to be.

4. Who has the power

Likewise it is to be seen who has the power to summon, and it is to be known that every person who has

ordinariam, sicut ipse dominus rex, vel delegatam, sicut justitiarius ab eo constitutus, & non alius à justitiario substituendus, quia justitiarius justitiariū substituere non potest, & ideo dico (ab eo qui habet jurisdictionem), quia alius coertionem non habet, & cùm coertionem non habeat, punire non poterit contumacē, nec judicium à non suo judice factum ligat, nec tenet. Et in hoc casu aut constat ab initio justitiarium habere jurisdictionem, aut constat q non habeat, aut dubitatur an habeat. Si autem constiterit q habeat, venire tenetur summonitus vel se legitimè excusare, alioquin pœnam contumaciæ non evadet. Si autem constiterit quòd non, summonitus impunè se absentabit. Si autem dubitetur, venire debet summonitus, saltem privilegium fori allegaturus, ut infra pleniùs dicetur de ꝑhibitionibus.

5. Per quos et per quot facienda sit summonitio, et quando.

Item ꝑ quos & ꝑ quot facienda sit sum̄onitio, & videtur q per duos ad minus, qui si necesse fuerit, testificari possunt sum̄onitionem esse legitimè factā, & qui eam possint ꝑbare si opus fuerit, & cùm inde dubitetur, cùm ꝑ justiciarios fuerint inde requisiti, de tempore, die & loco, & aliis circumstantiis, secundum q inferiùs dicetur. Item quando? & sciēdum q ꝑ quindecim dies ante diem quo comparere debeat fiat talis sum̄onitio omnibus, qui in regno sunt & extra comitatū & infra quatuor maria.

f. 334.

Quatuor maria.

6. Quæ summonitio sit legitima.

Et talis sum̄onitio dici debeat legitima. Si autem minus spacium cōtineat, possit illegitima judicari nisi

jurisdiction and an ordinary power of judging, as the lord the king himself, or a delegated power as a justiciary appointed by him, and not another person to be substituted by the justiciary, because a justiciary cannot substitute a justiciary, and therefore I say "by him who "has jurisdiction," because another person has not coercion, and if he have not coercion he cannot punish a contumacious person, nor does a judgment, which is not made by his proper judge, bind any one, nor hold him. And in this case it is either certain from the beginning that the justiciary has jurisdiction, or it is certain that he has it not, or it is doubted whether he has it. But if it be certain that he has it, the person summoned is bound either to come or to excuse himself lawfully, otherwise he will not escape the punishment of contumacy. But if it be certain that he has it not, the person summoned will absent himself with impunity. But if it be doubted, the person summoned ought to come, in order to allege at least his privilege of a tribunal, as will be explained below more fully concerning prohibitions. to summon.

Likewise through whom and through how many persons the summons ought to be served, and it seems through two persons at least, who, if it be necessary, are able to testify that the summons has been lawfully made, and who can prove, if it be necessary, and when there are doubts thereon, if they should be required by the justiciaries, concerning the time, the day, and the place, and other circumstances according to what will be explained below. Likewise when? and it is to be known that for fifteen days before the day when an appearance should be made, such a summons ought to be served upon all, who are in the kingdom and beyond the county and within the four seas. 5. Through whom and through how many persons a summons ought to be served, and when. f. 334.

And such a summons ought to be pronounced lawful. But if it comprise a less space, it may be adjudged 6. What summons is lawful.

Cf. ff. 241, 247. ob causam legitimā minus tempus statuatur. Ut si ꝑpter causam quæ instantiā desiderat, ꝑpter rem fortè quæ tempore pitura sit, vel ꝑpter alias causas ubi induciæ arbitrariæ sunt, ꝑpter necessitatem, ut ꝑpter concilium Lateranense de ecclesiis vacantibus. Item propter præsentiam partium in itinere justiciariorum in eodem comitatu existentium, quod secùs est si aliqua manēs sit extra. Item propter personas qui celerem habere debent justitiam, sicut sunt mercatores quibus exibetur[1] justitia pepoudrous,[2] & sic ex causa moderatur tempus sum̄onitiōis, & continet minus tempus quandoq̃ quàm spacium xv. dierum. Et quandoq̃ tempus summonitionis ex causa continet tempus magis diffusum, propter longam ꝑegrinationem, secundum quod quis fuerit in remota peregrinatione vel ꝑpinqua, & in hoc erit dilatio arbitrativa. Legitima igitur sūmoñ erit quindecim dierū, modo quo p̃dictū est, & si minus spacium cōtineatur qm quindecim dierū sine causa rationabili, tunc cùm sum̄onitus comparuerit, aut calumniata est summoñ sicut illegitima, aut non calumniata. Si autem non calumniata, tunc ꝑcedat loquela ac si sum̄onitio esset legitima. Si autē calumniata fuerit & ꝑbata illegitima, detur alius dies legitimus in curia, quæ dedici non possit cōtra recordū justiciarioř.

Britton, vi. ch. v. § 4. Si autem post minus legitimā sum̄onitioñ tenens se essoniaverit, vel defaltam fēcerit, vel sine calūnia in placito processerit, vel diem amoris ceperit, sum̄onitioñ minus legitimè factam ulteriùs causari non poterit. Et etiam bene poterit quis respondere sine sum̄onitioñ si voluerit, nec ei injuriatur cùm hoc velit. Sunt autē quidam casus q̃ tenens sum̄onitioñ dedicere non poterit,

[1] "exhibetur," MS. Rawl. C. 160. | [2] "pepoudrus," MS. id.

unlawful, except upon a legitimate cause a less time be appointed. As of on account of a cause which demands instancy, on account of a thing by chance which is perishable, or according to other causes where a suspension of proceedings is arbitrary on account of necessity, as on account of the Council of Lateran concerning vacant churches. Likewise on account of the presence of the parties on the circuit of the justiciaries who are in the same county, which would be otherwise if any one of them was resident beyond the county. Likewise on account of persons who ought to have speedy justice, such as merchants, to whom justice is administered in courts of pepoudrous, and so for a certain cause the time of a summons is reduced, and it sometimes comprises a less time than a space of fifteen days. And sometimes the time of summons for a certain cause contains a longer period of time, on account of a long journey, according as a person is engaged on a distant or neighbouring journey, and in this matter the delay will be optional. A lawful summons, therefore, will be of fifteen days in the manner above said, and if it comprises a less space than fifteen days without reasonable cause, then when the person summoned has appeared, the summons is objected to as unlawful, or it is not objected to. But if it be not objected to, then let the argument proceed as if the summons were lawful. But if it be objected to and is proved to be unlawful, let another lawful day be assigned in court, which cannot be gainsayed against the record of the justiciaries. But if after an unlawful summons the tenant has essoined himself, or has made default, or without objection has proceeded with the plea, or has taken a day of love, he can no further allege as an excuse an unlawful summons. And a person may well answer without a summons if he will, nor is wrong done to him, when he is so willing. But there are certain cases where the tenant cannot deny the summons, as if before some one who has a record he

ut si coram aliquo, qui recordum habet, ubicunq̃ atturnatum fecerit, ꝑpter verba in atturnato faciendo, ut cùm dixerit tenens, facio attornatum meum in loquela quæ est coram tali, vel coram te, ꝑ hoc concedit q̃ processit summoñ, quia non poterit esse coram aliquo nisi p̃cesserit sum̄onitio, quia si diceret in loquela quæ erit, sic nunquā admitteret ad attornū faciendum. Et si petens possit attornum facere statim post impetratioñ brevis, tenens hoc nunquàm facere possit de jure antequā loquela sua fuerit coram suo judice ꝑ sum̄onitioñ. Et unde si dicat feci attornatum meum, idem est q̃ confiteri sum̄onitionē, vel quasi, & si ante factus fuerit attornatus effectū non habebit ante sum̄onitionem, nec justiciarius de aliquo potestatē habebit, antequam loquela fuerit coram eo ꝑ sum̄onitioñ. Nullus autem [1] dies dari debet extra com̃ nisi ꝑ spacium xv. dierum, nec ꝑ tantum spacium sine essoñ, nisi hoc faciat consensus partium, quo casu fiat ut in fine dicetur de essonio.[1]

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[1] "Nullus autem" down to "de "essonio" is omitted in MS. Rawl. C. 160, but it occurs in MS. Rawl. C. 159.

has anywhere constituted an attorney, on account of the words in the power of attorney, as when the tenant has said, I appoint my attorney in the argument which is before so-and-so, or before thee, by this he concedes that a summons has preceded, because he cannot be before any one unless a summons has preceded, because if he were to say, "in an argument which will be," he would never be admitted thus to appoint an attorney. And if the claimant can appoint an attorney immediately after suing out a writ, the tenant can never do this rightfully before his cause is before his judge by a summons. And hence if he says, I have appointed my attorney, it is the same as to confess the summons, or as it were so, and if the attorney were appointed beforehand it will not take effect before the summons, nor will the justiciary have any power over any person, before the cause is brought before him through a summons. But no day ought to be assigned beyond the county except for a space of fifteen days, nor for so long a space without essoins, unless the consent of the parties does this, in which case let it be done as will be explained in the end concerning an essoin.

# TRACTATUS SECUNDUS
# LIBRI QUINTI,

IN QUO TRACTATUR

# DE ESSONIIS.[1]

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f. 334 b.

## Cap. I.

1. De modo procedendi post summonitionem.

Ad diem verò sum̄onitionis, sive legitima sit sum̄onitio sive non, aut cōparet summonitus, vel se essoniat, vel defaltam facit. Si autem venerit, aut dedicit sum̄onitionem, aut concedit summonitionem legitimam, quo casu, s. quando concedit sum̄onitioñ legitimam, statim respondeat si vicecom̄ miserit breve: si autem non, recedet tenens quietus, & petens ꝑquirat sibi ꝑ aliud breve. Si autem breve venerit, tunc proposita intentione petentis, respondeat tenēs intentioni, vel excipiat cōtra breve, vel petat visum. Si autem causetur summonitioñ minùs rationabilem esse, detur ei dies rationabilis, ad quem veniat responsurus. Si autē illā omninò dedixerit, sive sum̄onitus fuerit sive non, tunc querend' erit à petēte utrum se tenere voluerit ad defaltā, vel ad placitū principale, si autem ad placitum principale, tunc tenēs statim respōdeat. Si autem tenuerit se ad defaltā, & sum̄onitus sum̄onitioñ omninò defendat, tunc sum̄onitores vocandi sunt, ꝙ testentur sum̄onitioñ. Et cùm diligenter examinati ꝑbaverint sum̄onitioñ legitimè factam, tunc primò vadiat summonitus

Glanville, l. i. c. 30. Britton, vi. ch. v. § 6.

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[1] MS. Rawl. C. 160 has not any break in the Treatise here, but continues the context.

# THE SECOND TREATISE

OF

# THE FIFTH BOOK,

WHICH TREATS OF

# ESSOINS.

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## Chapter I.

f. 334 b.

1. Of the mode of proceeding after a summons.

On the day of the summons, whether the summons be lawful or not, the person summoned either appears or essoins himself, or makes default. But if he has come, either he denies the summons or he allows it to be lawful, in which case, to wit, when he allows the summons to be lawful, he must forthwith answer, if the viscount has sent a writ; but if not, the tenant shall withdraw quit, and the claimant must provide for himself by another writ. But if a writ has come, then upon the declaration of the claimant having been propounded, let the tenant reply to the declaration, or let him except against the writ, or let him claim a view. But if he shall allege the summons to be unreasonable, let him have a reasonable day assigned to him, at which he shall appear in order to make answer. But if he shall have altogether denied it, whether he has been summoned or not, then the claimant must be questioned whether he wishes to hold himself to the default, or to the principal plea, but if to the principal plea, then let the tenant forthwith make answer. But if he has kept himself to the default, and the person summoned denies altogether the summons, then the summoners are to be called in order to testify to the summons. And when, having been diligently examined, they have proved the summons to have been lawfully made, then let the per-

legem, & defendat summonitioñ ꝑ legem cōtra testificationem sum̄onitorum, s. q̄ summonitio non ꝓvenerit ad ipsum, sed q̄ nec ad ipsum, nec ad domicilium suum. Si autem sum̄onitores in ꝓbatione sūmonitionis diligenter examinati concordes non extiterint, tunc (quasi sūmonitione nullâ) non habebit summonitus necesse sum̄onitionē defendere ꝑ legem, sed detur ei alius dies legitimus, nisi gratis incontinenti velit respondere. Cùm autem post legem vadiatam diem habuerit tenens de lege facienda, ad diem illum se poterit essoniare de placito legis vadiatæ, & tunc in fine veniat cum lege, & eam faciat, si possit, & si in lege facienda defecerit tenens,[1] petens seysinam suam recuperabit statim,[2] vel si defaltam fecerit, petens statim[2] seysinā suam recuperabit per defaltam, si tenens p̃sens fuerit: si autem absens, capiatur terra in manum domini regis per parvum cape, & ipse summoneatur quòd sit ad aliam diem auditurus judicium suum, per breve inferiùs notandum. Si autē ad primum diem non cōparuerit tenens, sed antequam comparuerit in curia defaltā fecerit, tunc aut vicecomes misit breve aut non misit: si vicecom̃[3] non misit breve, tunc cùm petens offerat se liti, justiciarii ꝓcedere non poterint secundùm defaltā sine warrāto, vel sine brevi, nec poterit[4] alium diem dare, infra
f. 335. quem mandare possint vicecomiti q̄ faciat venire breve, quia tali modo sine brevi et warranto dando diem, sibi usurparet[5] jurisdictionem, nec etiam si breve veniret ad alium diem non valeret, quia dies sūmonitionis ꝓteriit, erit igitur opus alio brevi. Si autem miserit breve, offerente se liti petente, propter defaltam tenen-

[1] "tenens" omitted MS. Rawl. C. 160.
[2] "statim" omitted, id.
[3] "vicecomes" omitted, id.
[4] "poterint," MS. Rawl. C. 160.
[5] "usurparent," id.

son summoned wage his law and deny the summons by his law against the testimony of the summoners, to wit, that the summons did not reach him, and that it neither reached him nor his domicile. But if the summoners having been carefully examined on the proof of the summons have not been found to agree with one another, then (as if there had been no summons) the person summoned shall not be under the necessity to deny the summons by his law, but another lawful day should be assigned to him, unless gratuitously he should be willing forthwith to make answer. But when after waging his law the tenant shall have a day to make his law, on that day he may essoin himself upon the plea of a wager of law, and then in the end let him come with his law, and let him make it, if he can, and if the tenant has failed in making his law, the claimant shall recover his seysine forthwith, or if he has made default, the claimant shall forthwith recover his seysine by default, if the tenant be present, but if he be absent, let the land be seised into the hand of the lord the king by a little *cape*, and let him be summoned himself, that he be present on another day in order to hear his judgment, by a writ to be noted below. But if the tenant has not appeared on the first day, but has made default before he has appeared in court, then either the viscount has sent a writ or he has not sent it: if the viscount has not sent a writ, then when the claimant presents himself to contest the suit, the justiciaries may not proceed according to the default without a warrantor, or without a writ, nor can they give another day, within which they can send a mandate to the viscount to cause a writ to come, for by giving a day in such a manner without a writ or a warrantor they would usurp jurisdiction to themselves, and even if a writ were to come for another day, it would not avail, because the day of the summons has passed, there will therefore be need of another writ. But if he has sent a writ, upon the claimant presenting himself to contest the suit, on f. 335.

tis capietur terra in manum domini regis per magnum cape, cujus forma inferius notatur, et tenens summoneatur quòd sit ad alium diem responsurus de capitali placito & de defalta, scilicet quare non fuit ad primum diem sicut summonitus fuit, ad quem diē si venerit statim respondeat ad capitale placitum, nisi petens se tenere voluerit ad defaltam, si autem se tenuerit ad defaltam, tunc oportet tenentem docere causam sufficientem, et rationem quare non fuit ad alium diem sicut summonitus fuit. Causæ quidem possunt esse plures, de quibus inferius dicetur. Et quarum una poterit esse talis inter alias, quòd nullam habuit summonitionem, quo casu oportebit petentem docere contrarium per summonitores qui feceruñt summonitionem, alioquin nulla erit summonitio, nec aliqua defalta. Et ideo statim respondeat tenens ad placitum capitale. Si autem testata fuerit summonitio & probata, tunc erit locus defensioni per legem, secundum quod superius dictum est. Si autem post primam captionem ad alium diem non venerit, amittet seysinam suam per secundam captionem per parvum cape, nisi tunc veniat et defendat per legem, ut supra de summonitionibus et supersisis.[1] Si autem ad primum diem non venerit sed se essoniaverit, tunc videtur quodāmodo concesisse summonitionem, donec præsens illam defenderit, & dedixerit. Quo casu, dabitur ei alius dies per essoniatorē suum, sive breve venerit sive non. Ad quem diem si tenens venerit, statim respondeat vel excipiat. Si autem non venerit, capiatur terra in manum dñi regis per defaltam, et ipse sum̄oneatur quòd sit ad alium diem per magnum cape, inde responsurus et ostensu-

[1] "ut supra summonitiones et sursisas," MS. Rawl. C. 160.

account of the default of the tenant the land shall be seized into the hand of the lord the king by a great *cape*, the form of which is noted below, and let the tenant be summoned that he be present on another day in order to answer concerning the capital plea and concerning the default, to wit, wherefore he was not present on the first day as he was summoned, upon which day if he has come, let him forthwith answer to the capital plea, unless the claimant has wished to keep himself to the default, but if he has kept himself to the default, then it is necessary that the tenant show sufficient cause and reason wherefore he has not been present on another day, as he has been summoned. The causes may be several, concerning which it will be explained below, and whereof one may be of this kind amongst others, that he has had no summons, in which case it will be incumbent upon the claimant to show the contrary by the summoners who have served the summons, otherwise there will be no summons, nor any default. And accordingly let the tenant answer forthwith to the capital plea. But if the summons has been attested and proved, then there will be place for a defence by his law, according to what has been said above. But if after the first seizure he has not come upon another day, he shall lose his seysine by a second seizure through a little *cape*, unless he shall then come and defend by his law as above concerning summonses and demurrers. But if he has not come on the first day, but has essoined himself, then he seems in some manner to have admitted the summons, until he should be present to contest it and has denied it. In which case, another day will be allowed to him through his essoiner, whether the writ has came or not. At which day if the tenant has come, let him forthwith answer or object. But if he has not come, let his land be seized into the hand of the lord the king by default, and let himself be summoned by a great *cape*, that he be present on another day in order to answer and to show where-

rus, quare non servavit diem sibi datum per essoniatorem suum. Ad quem diem si non venerit, fiat ut supra ex secunda defalta. Et si venerit, eodem modo ut supra. Si autem ad diem sibi datum per essoniatorem suum de malo veniendi faciat se essoniari tenens de malo lecti, tunc dabitur alius dies petenti, licet non tenenti: infra quam, & statim post essonium mittantur ad eum quatuor milites de comitatu, ad videndum utrū infirmitas, qua se tenens essoniaverit, sit languor vel non. Et tunc cùm venerint ad locū ubi jacuerit vel jacere debuit, invenerit[1] eū in lecto sicut essoniatus fuit et confitentem essoniū, sive revera se ipsum essoniaverit, seu falsô essoniatus fuerit p alium. Quo casu procedent milites in visu faciendo modo debito, secundum q̄ inferiûs dicetur (ac si omnia ritè acta essent) et dabunt ei malum transiens, vel languorem, secundū q̄ judicaverint de statu suo, nec ad diem sibi datū poterit tenens ulteriùs defendere summonitiones, nec dedicere, et sursisas contra attestationem quatuor militum, nec contra propriam recognitionem essonii, cum prædicti quatuor milites in hoc habeant recordum, nec etiam si dicat quòd petens ipsum falsò essoniari fecerit, etiā sine summonitione: utroquè essonio audiri non debeat, quasi propriam allegans falsitatem. Si autē quatuor milites invenerint eum extra lectum in curia, vel vagantem p̄ rura, & diffitentem[2] essoniatorem, tunc non possunt ei diē dare, vel si dederint, forte non vult aliquē recolligere, vel forte non est inventus in loco ubi jacere debuit, q̄ possint ei diem dare. Et unde cùm ad diem eis præfixum in curia, sive petens plures dies secutus fuerit versus eos, sive

Glanville, l. i. c. 19.

f. 335 b.

[1] "invenerint," MS. Rawl. C. 160.

[2] "deficientem," MSS. Rawl. C. 160 and C. 159.

fore he has not kept the day given to him through his essoiner. At which day if he has not come, let it be done as above on a second default. And if he has come, let it be done in the same way as above. But if upon the day given to him through his essoiner for sickness in coming the tenant cause himself to be essoined for bed-sickness, then let another day be given to the claimant, although not to the tenant, within which and forthwith after the essoin let four knights of the county be sent to him, to see whether the infirmity for which the tenant has essoined himself be languor or not. And then when they have come to the place where he lies ill or is said to lie ill, they will have found him in bed as he was essoined and confessing the essoin, whether he has truly essoined himself or has been falsely essoined by another. In which case the knights shall proceed to make a view in due manner, according to what will be said below, as if all things had been duly done, and they shall assign to him a passing sickness, or languor, according to what they have judged concerning his state, nor upon the day assigned to him will the tenant be able to contest the summonses nor to deny them, nor the adjournments, against the attestation of the four knights, nor against his own recognition of the essoin, since the aforesaid four knights have in this matter a record, nor even if he should say that the claimant has caused himself to be falsely essoined, even without a summons; upon either essoin he ought not to be heard, alleging as it were his own falseness. But if the four knights have f. 335 b.
found him out of bed in the court, or walking about the country, and discrediting his essoiner, then they cannot assign to him a day, or if they shall assign one, perchance he is not willing to recollect it, or by chance he is not found in the place where he ought to be lying, so that they may be able to assign to him a day. And hence when on the day prefixed for them in the court, whether the claimant has obtained several days against

unum, & testati fuerint visum suum secundum q̄ ipsum invenerunt vel non, tunc si tenens non venerit, capiatur terra in manum domini regis, & p̄cedatur per omnia sicut superius dictum est. Si autē venerit, defendere poterit sum̄onitionem & essonium, tam de malo veniendi quàm de malo lecti, & etiam sursisas tam primæ defaltæ, ad primam captionem, quàm secundæ ad secundam, usquè ad judicium. Post judiciū vero non erit locus defensioni per legem contra probationem summonitionis, cùm judicia rata esse debeant, si petens[1] se tenuerit ad defaltam, & quo casu facta examinatione de sum̄onitione, si sum̄onitio testata fuerit, statim vadiat legem, & habeat diem ad legem faciendam, & cùm legem fecerit post essonia sua, statim & eodem die respondebit sine alia summonitione, sicut inveniri poterit in rotulo de termino ut supra.[2] Si autē omninò nulla præcessit summonitio, & petens falsò essoniare fecerit tenentem aliquo essonio uno vel pluribus, cùm tenens nihil inde sciverit, & post summonitionem quæ fieri debuit & essonia, capta sit terra in manum domini regis, & post primam defaltam & secundam adjudicata sit seysina petenti, cùm nulla defalta ibidem esse debeat: ad querelam tenentis subveniendum est ei hoc modo, scilicet quòd sum̄oneantur sum̄onitores, & illi per quorum visum terra capta fuit in manum domini regis, ut inde diligens fiat examinatio, & si p̄bata non fuerit summonitio, nec testata, nulla erit defalta, nec necesse esset defendere summonitionem, quæ nulla est propter defectum probationis. Item cùm nulla sit summonitio nec defalta, nulla sequi deberet captio, & cùm captio nulla, nulla sequi deberet

[1] "si petens" down to ut "supra" omitted in MS. Rawl. C. 159.

[2] "ut supra" omitted MS. Rawl. C. 160.

them or only one, and they have testified their view according as they have found him or not, then if the tenant has not come, let the land be seized into the hand of the lord the king, and let the proceedings in all things be conducted as above said. But if he has come, he may contest the summons and the essoin, as well for sickness in coming as for bed-sickness, and likewise demurrers as well of the first default at the first caption, as of the second default at the second caption up to the judgment. But after the judgment there will be no place for a defence by his law against the proof of a summons, since judgments ought to be ratified, if the claimant has held himself to the default, and in which case upon an examination having been made concerning the summons, if the summons has been attested, let him forthwith wage his law, and let him have a day to make his law, and when he has made his law after his essoins, forthwith and upon the same day he shall answer without another summons, as may be found in the roll of the term as above. But if no summons at all has preceded, and the claimant has falsely caused the tenant to essoin himself by some one or more essoins, when the tenant has known nothing thereof, and after the summons, which ought to have been made, and the essoins, the land has been seized into the hand of the lord the king, and after the first and second default seysine has been adjudged to the claimant, when there ought to have been no default at all, at the complaint of the tenant he is to be aided in this manner, to wit, that the summoners are to be summoned, and those persons by whose view the land has been seized into the hand of the lord the king, that a diligent examination be thereon made, and if the summons has not been proved, nor attested, the default shall be null, nor shall it be necessary to contest the summons, which is null on account of the failure of proof. Likewise when the summons and the default are null, no seizure ought to follow, and when the seizure is

possessionis amissio, ergo à primo, ubi nulla summonitio, nulla sequitur possessionis amissio, quia ubi primum & principale (quod est summonitio) non subsistit, nec ea quæ sequuntur locum habere debent, & ad querelā talis fiat vicecom̃ breve in hac forma.

2. Breve de habendo eum coram justitiariis, qui per fraudem, malitiam et falsitatem essoniavit adversarium suum.

Rex vic. salutē. Præcipimus tibi, quòd habeas coram justitiariis nostris &c. talem petentem, scilicet, ad audiendum judicium suum et considerationem curiæ nostræ de hoc, quod ipse per malitiam & manifestā falsitatem fecit disseysiri talem de tanta terra cum pertinentiis &c. Et unde, cùm idem B. nullam haberet sum̄onitionē, optulit se idem A. versus eum, ita quod terra capta fuit in manū nostram semel & secundò, & per quam defaltam idem A. terram illam recuperavit, desicut illa defalta nulla fuit, ut dicit: & catalla ipsius B. in eadem terra tunc inventa & ei occasione prædicta oblata, eidem sine dilatione reddi facias & restitui. Præcipimus etiam tibi quod habeas coram &c. ad eundem terminum A. et B. per quos summonitio prima facta fuit, & in curia nostra testata, & præterea quatuor illos per quorum visum terra illa capta fuit in manum nostram, & per quos captio illa testificata fuit in curia nostra &c., & etiam illos per quos secunda sum̄onitio facta fuit & testata, ad certificandum justiciarios nr̃s de p̃dictis sum̄onitionibus & captionibus. Et habeas ibi hoc breve. Teste &c. Ad quem diem cùm venerint, diligenter examinentur. Inprimis sum̄onitores primi de prima sum̄onitione, & postea illi quatuor per quorū visum terra illa capta fuit in manum domini regis, et ultimò duo ultimi sum̄onitores. Et in quo casu, si primi summonitores in omnibus convenerint & concordent, & summonitionem primam ritè factam esse p̃baverint, & prædicti quatuor, per quorum visum terra capta fuit,

f. 336.

null, no loss of possession ought to follow, therefore from the first, where there is no summons, no loss of possession follows, because where the first and principal (which is the summons) does not exist, those things which follow ought not to take place, and at the complaint of such an one let a writ in this form issue to the viscount.

2. A writ to produce before the justiciaries the person, who through fraud, malice and falsehood has essoined his adversary.

The king to the viscount greeting. We enjoin you that you produce before our justiciaries, &c. so-and-so the claimant, to wit, to hear his judgment and the resolution of our court on this matter, that he through malice and manifest falsehood has caused so-and-so to be disseysed of so much land with the appurtenances &c. And hence when the said B. had no summons, the said A. presented himself against him, so that his land was seized into our hand once and a second time, and through which default the said A. recovered that land, since that default has been null, as he says ; and that you cause the chattels of the said B. found at that time on the said land and presented to him on the aforesaid occasion, to be rendered and restored to him without delay. We also enjoin you that you should produce &c. at the same time A. and B., through whom the first summons was made, and was attested in our court, and besides those four persons by whose view that land was seized into our hand, and through whom that seizure was testified in our court, &c., and likewise those, through whom the second summons was made and attested, to certify our justiciaries concerning the aforesaid summonses and seizures. And produce there this writ. Witness, &c. At which day when they have come, let them be diligently examined : in the first place the first summoners concerning the first summons, and afterwards those four, through whose view that land has been seized into the hand of the lord the king, and in the last place the two last summoners. And in which case if the first summoners have agreed and are of accord in all things, and have proved that the first summons has been duly made, and the aforesaid four persons, by whose view the land has been f. 336.

captionem ritè factam ꝑbaverint, & ultimi sum̄onitores sum̄onitionem ultimam, & sic per omnia conveniant & concordent, adhuc locum habebit defensio per legem contra utrasquè summonitiones in forma prædicta. De hac materia inveniri poterit de termino S. Michaelis anno regis Henrici tertio incipiente quarto in comitatu Surr̃ de Roberto de Basings querēte. Si autē primi duo sum̄onitores non convenerint nec concordent, licet omnes alii conveniant in captione, & in secunda summonitione, non valebit: cùm prima sum̄onitio deficiet quasi nulla, & si omnes discordes sint ubique & in nihilo concordes, multo minus, & quo casu retractabitur judicium, & reformabitur possessio primo possessori. Item non in omni casu imputari possit sum̄onitoribus, sed negligentiæ vicecomitis, & unde inquirendum erit quis in culpa fuit, utrum vicecomes vel sum̄onitores, & si summonitio remanserit facienda pro defectu vicecomitis, quia illam alicui nunquam injunxit faciendam, in misericordia domini regis remanebit, nisi excu-
Glanville, l. 1. i. 30. § 5. sationes habeat per quas se defendere possit: quæ
Britton, vi. ch. v. § 6. tales esse possunt, scilicet breve tam tardè recepit & extra comitatum, q̃ nulli potuit injungere sum̄onitionem faciendam, vel quòd aliud præceptum majus supervenit de negotio ipsius domini regis, ubi oportuerit eum ꝑsonaliter interesse, et quo casu amittit petens breve suum, & alio brevi opus erit, quia dies sum̄onitionis in primo brevi præteriit. Si vero dicat vicecomes q̃ summonitionem faciendam injunxit legitimis summonitoribus, sive extra comitatum sive in comitatu, & illi hoc confiteantur, sed sum̄onitionem non fecerint, sum̄onitores

seized, have proved that the seizure was duly made, and the last summoners have proved the last summons to have been duly made, and so in all matters they agree and are of accord, a defence on the law against both summonses shall still have place in the form abovesaid. On this subject a case will be found in St. Michael's term in the third and fourth years of king Henry in the county of Surrey, concerning Robert de Basings the complainant, But if the two first summoners do not agree nor are of accord, although all the others agree in the seizure and in the second summons, it will not avail, since the first summons will fail as being as it were null; and if all should be discordant everywhere and in nothing of accord, much less will it avail, and in which case the judgment will be retracted, and the possession will be re-established for the first possessor. Likewise it cannot in all cases be imputed to the summoners, but to the negligence of the viscount, and hence inquiry will have to be made, who has been in fault, whether the viscount or the summoners; and if the summons has remained to be made from the default of the viscount, because he has never enjoined any one to make it, he will remain at the mercy of the lord the king, unless he has certain excuses, through which he can defend himself: which may be of this character, to wit, that he received the writ so late and outside the county, so that he could not enjoin any one to make the summons, or because some other more important precept supervened concerning the business of the lord the king himself, where it was incumbent upon him to be present in person, and in which case the claimant loses his writ, and he will have need of another writ, because the day of summons in the first writ has passed. But if the viscount should say that he has enjoined the lawful summoners to make that summons, whether outside the county or within it, and they confess it, but the summoners have not made the summons, the summoners

in misericordia remanebunt, & illud breve inutile erit petenti, quia dies summonitionis p̃teriit. Si autem negaverint hoc sibi fuisse injunctū, tunc aut fuit hoc eis publicè injunctum in comitatu, vel extra comitatum sine solennitate aliqua, quo casu hoc dedicere possunt contra vicecomitē, & vicecomes in misericordia. Si autem in comitatu hoc fuerit eis injunctū, non poterunt hoc dedicere contra recordū comitatus, quia comitatus in hoc habet recordum, sicut in aliis publicis actibus, qui fieri debent cū solēnitate. Publici verò actus sunt, injungere sum̄onitiones, plegios capere de ꝑsequendo, & de standō ad rectū, tam in civili negotio, quâm criminali. Si autē sum̄onitores non venerint ad primum diem ad testificādam sum̄onitionem, ubi dedicere non possunt quin hoc eis esset injunctū, in misericordia remanebunt. Item quis sum̄oneri debet videndum, & sciendum q̃ tam minor quâm major, tam masculus quàm fœmina, dum tamen minor non sum̄o-
f. 336 b. neatur per se, si cōstiterit ipsum esse minorem, sed ꝑ
Britton, vi. ch. v. § 2. tutores, custodes sive procuratores in loquelis, nisi minores infra ætatem respondere tenentur, non obstante minore ætate. Item viri religiosi per procuratores, sindicos & actores ꝑpetuos & non amotibiles, et qui tales sint quòd possint lucrari & perdere, & rem in judicium deducere. Et notandum in fine quòd si quis summonitionē cognoverit, causetur tamē illā esse minus legitimam, hoc faciat primo die sum̄onitionis. Si autē primo die se essoniaverit vel defaltam fecerit, ulteriùs brevem sum̄onitionem causari non poterit. Et ad hoc notandum, q̃ summonitionum, alia poterit esse legitima & sufficiens ab initio, & cùm testata fuerit & ꝑbata,

will remain at the mercy of the lord the king, and that writ will be useless to the claimant, because the day of summons has passed. But if they have denied that this has been enjoined to them, then this has either been publicly enjoined to them within the county or outside of it without any solemnity, in which case they may deny this against the viscount, and the viscount will be at the mercy of the lord the king. But if this has been enjoined to them within the county, they cannot deny this against the record of the county court, because the county court has in this matter a record, as in other public acts, which ought to be performed with solemnity. But the public acts are to enjoin summonses, to take security for prosecutions and for standing a trial, as well in a civil as in a criminal business. But if the summoners have not come on the first day to testify to the summons, where they cannot deny that this has been enjoined to them, they will remain at the mercy of the lord the king. Likewise we must see who ought to be summoned, and it is to be known that a minor as well as a person of full age, a male as well as a female, provided however that a minor be not summoned by himself, if it is ascertained that he is a minor, but f. 336 b. through his tutors, his guardians, or his proctors to conduct causes, unless minors under age are bound to answer, notwithstanding their minority. Likewise men of a religious order through their proctors, syndics and perpetual agents not removable, and who are such as may lose or gain, and carry a suit to judgment. And it is to be noted finally that if any one has admitted a summons, but he alleges that it is not legitimate, let him do this on the first day of the summons. But if on the first day he has essoined himself or has made default, he cannot any further allege a short summons. And in addition to this it is to be noted, that of summonses one may be legitimate and sufficient from the beginning, and when it has been testified and proved,

defendi poterit per legem, sed hoc antequam quis in judicio comparuerit. Est etiam alia legitima cum quis in judicio comparuerit, quæ dedici non poterit, nec defendi per legem, scilicet postquam quis in judicio comparuerit. Item est & alia viciosa & non sufficiens, ubi fit tantum per unum, qui recordum habere non potest, nec per se inducere præsumptionem. Item poterit esse legitima ab initio sed inefficax ex post facto, deficiente probatione cûm sum̄onitores examinati in probatione non concordent, nec erit necesse talem summonitionem defendere per legem, cùm sit quasi nulla. Item est omninò vitiosa summonitio, quæ fit fraudulenter per deceptionem petentis per falsos summonitores & non per vicecomitem & ballivos suos. Est etiam vitiosa, ubi fit in absentia tenentis cùm peregrè profectus fuerit ad partes transmarinas vel alias remotas, vel cùm fuerit in itinere cōstitutus & iter arripuerit eundi, ita quòd citatio vel summonitio eum non comprehendit in domicilio, nec inventus fuerit a sum̄onitoribus infra comitatum, ubi sum̄onitio facienda demandatur, quia si extra comitatū inveniatur, non ligat eum sum̄onitio, quia non tenetur ubiquè recipere sum̄onitionem, nec à quocunquè, & non nisi à ballivis cùm warrantum habuerint sum̄onendi. Item poterit esse sum̄onitio legitima, & dies & dilatio illegitima, si tempus illegitimum non continuerit, si hoc causetur, aliter autem non, ut infra.

## Cap. II.

1. De exceptionibus qui non venerit ad summonitionem.

Legitimè summonitus si non venerit puniendus erit, nisi causas excusationis habeat legitimas, per quas suam excusare posset absentiam, quæ quidem plures esse possunt, et tunc videndum erit utrum absens sit quis ex causa necessaria & utili vel ex causa volun-

it may be contested at law, but this before any one has appeared in judgment. There is another which is legitimate when a person has appeared in judgment, which cannot be denied nor contested at law, to wit, after a person has appeared in judgment. Likewise there is another which is defective and not sufficient, when it is made only by one person, who cannot have a record nor by himself induce a presumption. Likewise it may be legitimate from the beginning, but ineffective *ex post facto*, the proof failing when the summoners having been examined are not of accord in the proof, nor will it be necessary to contest such a summons at law, since it is as it were null. Likewise there is a summons that is altogether defective, which is made fraudulently through the deceit of the claimant by false summoners and not by the viscount and his bailiffs. There is likewise a defective summons, where it is made in the absence of the tenant, when he has set forth on a journey abroad to parts beyond the seas or other remote parts, or when he is embarked on a journey and has set out on his road, so that the citation or summons does not find him in his domicile, nor has he been found by the summoners within the county, where the summons is ordered to be made, because if he be found beyond the county, the summons does not bind him, because he is not obliged to accept everywhere the summons, nor from any one except from the bailiffs, when they have a warrant to summon him. Again the summons may be legitimate, and the day and the delay illegitimate, if it has not contained an illegitimate time, if this be alleged, but otherwise not, as below.

## Chapter II.

1. Of the exceptions of him who has not appeared to the summons.

A person having been lawfully summoned, if he has not appeared, will have to be punished, unless he have legitimate causes of absence, through which he may excuse his absence, which may be of several kinds, and then it is to be seen whether a person has been absent

taria, si autem ex causa necessaria & utili, ut rei publicæ causa, ita quòd profectus sit in exercitum cum domino rege ad defensionem patriæ per preceptum domini regis, cùm ad hoc obligatus sit, excusatur: dum tamen hoc non affectaverit, nec in servitio alterius quàm domini regis, cûm ad hoc non teneatur nisi velit. Talibus enim non subvenit dominus rex nisi de gratia. Cùm autem quis ita se excusaverit de servitio
f. 337. domini regis, videndum erit utrum summonitione præventus sit vel non. Si autem summonitione prævenitus sit ita quòd attornatum facere possit, & copiam habuerit, & non fecerit, non erit ei subveniendum ex tali causa excusationis, quia mittere poterit attornatum. Sed ita esset, si quis posset factum domini regis judicare. Si autem sum̄onitione non sit præventus, tunc videndum utrum commodè & sine periculo venire possit, sive in servitio fuerit sive in officio, vel non. Si autem commodè venire possit, non excusatur, si autem commode venire non possit, tunc videndum erit si mittere possit vel non propter vim majorem. Si nec venire, nec mittere possit, nec attornatum facere, quia dominus rex præsens non est, forte excusatur per servitium. Sed in omnibus istis casibus magis erit spectanda voluntas domini regis quàm jus strictum, cùm servitium domini regis nulli debeat esse damnosum; & sicut non debet esse tenenti damnosum, ita non debet esse tenenti injuriosum. Officium vero alicujus sicut vicecomitis & constabularii neminem excusat, nisi in officio illo aliqua causa emergat necessaria ex inopinato, ubi præsentia talis debet esse necessaria, sicut iter justitiariorum vel incursus hostium, vel hujusmodi, quæ quidem causæ sufficientes sunt ad

from a necessary and useful cause, or from a voluntary cause, and if from a necessary and useful cause, as upon business of the State, for instance, that he has gone to the army with the lord the king for the defence of the country in obedience to the precept of the lord the king, since he is under obligation to such service, he is excused, provided however he has not affected this, nor has been in the service of any other than the lord the king, since he is not obliged to this, if he does not wish. For such persons the king does not assist except of grace. But when a person has so excused himself on account of the service of the lord the king, it will have to be seen whether he has been anticipated by the summons or not. But if he has been anticipated by the summons in such a way that he could constitute an f. 337. attorney, and has had plenty of time, and has not done it, he is not to be aided upon such a cause of excuse, because he can send an attorney. But it would be so, if any one could judge the act of the lord the king. But if he has not been anticipated by the summons, then it is to be seen whether he can come conveniently and without danger, whether he be in service or in office or not. But if he can come conveniently, he is not excused, but if he cannot come conveniently, then it is to be seen if he can send or not on account of *vis major*. If he can neither come, nor send, nor constitute an attorney because the king himself is not present, he is perchance excused through his service. But in all these cases the will of the lord the king is rather to be regarded than strict right, since the service of the lord the king ought not to be damaging to any one, and as it ought not to be damaging to the tenant, so it ought not to be wrongful to the claimant. But the office of any one, as for instance of the viscount and of the constable, excuses nobody, unless in that office some necessary cause arises unexpectedly, where the presence of such person ought to be necessary, as the circuit of the justiciaries, or an incursion of enemies, or such like, which causes

excusationem de servitio domini regis, dum tamen ad quemlibet diem datum per essoniatorem de servitio dñi regis habeat essoniatus warrantum suum per breve dñi regis, quod si hoc non habuerit, procedatur ad defaltam contra absentem, sicut contra eum qui non est excusatus. Item eodem modo excusat causa peregrinationis, sive brevis sit sive longa. Eodem modo videndum, utrum quis præventus sit summonitione vel non. Item excusat summonitum adversa valitudo nimia, quia pœnam contumaciæ non patitur, quem adversa valitudo defendit. Et provenit quandoquè talis adversa valitudo ex infirmitate veniendi, quæ infirmitas dicitur de malo veniendi: sive de infirmitate de reseantisa quæ dicitur infirmitas de malo lecti. Item excusatur quis propter majoris causæ occupationem, ut si quis implacitatus fuerit in curia domini regis, vel vocatus ad curiam regis ob aliquam causam, in omnibus curiis inferioribus excusatur. Sed quid dicendum erit de curia Christianitatis, cûm magis obediendum sit Deo quàm hominibus? hoc dico, quòd ad hunc differendum erit, & quòd dominus rex warrantizare poterit, ob reverentiam quę principi debetur. Item excusat absentia[1] non venientis usquè ad quartum diem majoris rei impetus, cui resisti non poterit, per casum fortuitum, ut si quis in veniendo versus curiam, cùm nullam aliam habeat excusationem, captus fuit ab hostibus, & per vim detentus, quòd venire non possit. Item si incidat in latrones. Item propter vim fluminum, vel quia pons solutus est, vel per tempestatem nimiam ad impedimentum navium, & ita quòd summonitus venire non possit tempestivè per circumitum,

Glanville, l. c. ii.
Britton, vi. ch. vii. § 2.

[1] "absentiam," MS. Rawl. C. 160.

are sufficient for an excuse on the service of the lord the king, provided that upon a certain day appointed through the essoiner on the king's service the person essoined has his warrantor through a writ of the lord the king, but if he has not this, let proceedings be had for default against the absent person, as against him who has not been excused. Likewise in the same manner the reason of a journey, whether it be short or long, is an excuse. In the same way it is to be seen whether a person has been anticipated by a summons or not. Likewise excessive infirmity of health excuses a person summoned, because he does not suffer the penalty for contumacy, whom adverse health prevents. And sometimes such adverse health arises from an infirmity in coming, which infirmity is called sickness on the way, or from an infirmity in staying at home, which is called infirmity from bed-sickness. Likewise a person is excused on account of occupation by a more important cause, as if he has been impleaded in the court of the lord the king, or has been called to the court on account of some cause, he is excused in all inferior courts. But what shall we say concerning the court of Christianity, since obedience is rather to be given to God than to man? I say this, that a difference is to be made here, and that the lord the king may warrant, on account of the reverence which is due to the Prince. Likewise the pressure of a more important business, by an accident which could not be resisted, excuses the absence of a person, who does not come until the fourth day, as if a person in coming towards the court, when he has no other excuse, has been taken captive by enemies and detained by violence, so that he cannot come. Likewise if he falls amongst robbers. Likewise on account of the violence of the rivers, or because a bridge has broken down, or through excessive bad weather, which has impeded navigation, and so that the person summoned could not come in time by a circuitous road; because if

quia si venire possit summonitus tempestivè p circumitū, non excusatur p talē fortuitum eventum.

2. De exceptionibus[1] f. 337 b. non venientis ad judicium post summonitionem.

Item non excusatur, si tardiùs à domicilio recederet quàm expediret, quia si citiùs, cōmode venire potuisset, nec impediret eum casus fortuitus. Eodem modo si priùs à domicilio recesserit quàm deberet, & in casum fortuitum ceciderit, hoc erit ei imputandum, quia si tempore congruo, in casus fortuitos non incideret. Item poterit summonitus assignare causam suam [2] quare fuit impeditus & qualiter, ut si contentiones quæ sunt, & occasiones quare fuerit impeditus, dum tamen post summonitionem & non ante. Item si sponte in casum fortuitum inciderit, ubi possit casum de facili evitare. Item refert utrum acciderit ei casus fortuitus ante diem summonitionis, vel post diem. Si autem post diem, competit ei excusatio modo quo prædictum est, vel non competit. Item si rationem prætendat quòd venire non possit ex certa causa, vel quia pons solutus fuit, & eodem die transivit alius, & statim post horam vel in eadem hora qua ipse præsens fuerit, non excusatur. Si autem propter inundationem aquarum, & alius eodem die & eadem hora, dum tamen sine discrimine & difficultate transierit, non erit locus excusationi. Item si tempestas ingruerit, tunc videndum, utrum eodem die & hora debita aliquis per cymbam vel per navem transierit, & ita non erit locus excusationi. Et unde consideranda sunt causa, tempus,

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[1] "De excusationibus," MS. Rawl. C. 160.

[2] "Item poterit esse summonitus "in causa," MS. id.

the party summoned could have come seasonably by a circuitous road, he is not excused by such a fortuitous occurrence.

2. Concerning the exceptions of a person f. 337 b. not coming to judgment after a summons.

Likewise he is not excused, if he has set out from his residence later than was expedient, because, if he had set out sooner, he might have come conveniently, nor would the accidental occurrence have impeded him. In the same manner, if he had set out from his residence sooner than he ought to have done, and has met with a fortuitous accident, this will have to be set down to his own account, because if he had set out at a suitable time, he would not have met with the fortuitous accident. Likewise the person summoned will be able to assign his own reason wherefore he was hindered, and in what way, as if there have been any contentions or occasions whereby he was hindered, provided they have happened after the summons and not before. Likewise if he has fallen of his own accord into a fortuitous accident, when he might easily have avoided the accident. Likewise it matters whether the fortuitous accident has befallen him before the day of the summons or after the day. But if after the day, he is entitled to an excuse in the manner above said, or he is not entitled. Likewise if he holds out a reason that he could not come for a certain cause, as because a bridge was broken down, and on the same day another person has passed, and immediately after the hour or in the same hour, in which he was himself present, he is not excused. But if on account of an inundation of waters, and another person on the same day and at the same hour, provided however without danger or difficulty, has passed, there will be no place for an excuse. Likewise if a tempest has supervened, then it is to be seen, whether on the same day and at the hour due any one has made the passage in a boat or in a ship, and thus there will be no place for an excuse. And hence are to be considered, the cause, the time, the place, the day, and the hour;

locus, dies, & hora, & infinitæ sunt causæ quibus quis absentiam suam poterit excusare. Cùm igitur competat alicui aliqua prædictarum excusationum, vel alia quæ sufficiens sit, sive tenens fuerit ultra mare, sive citra, sive probata fuerit summonitio sive non, cûm venire non possit, oportet mittere excusatorem aliquem qui dicitur essoniator, & qui prætendat excusationem summoniti esse talem quòd venire non possit per hæc verba.

3. Verba excusationis proferenda ab essoniatore in essonio de malo veniendi.

Quòd, cùm dominus suus in veniendo esset versus curiam (si essoniatus fuerit de malo veniendi, sive de ultra mare, sive de citra), quòd talis infirmitas ei devenit postquam fuit in veniendo versus curiam à domicilio proprio, vel alieno, citra mare, vel ultra, quòd venire non potest, pro lucro nec pro damno, quod vulgariter dicitur, pro lucrari nequè pro perdere, quod quidem dicat se paratum docere. Sed quia probatio non incumbit essoniatori, sed domino, nec scitur utrum verum sit essonium vel non, quòd summonitus illud advocare voluerit. Ideo ne essoniator oneretur cautione fidejussoria, scilicet plegiorum, quæ quidem gravis esset minimis personis & onerosa, nec depereat excusatio, constituitur quòd soli fidei essoniatoris credatur, quod quidem non est concedendum personis majoribus, sicut sunt illi qui tenent in baronia, qui causationem inveniant fidejussoriam, ne judicia sint delusoria: facilius enim inveniunt plegios & securitatem, & maxime cautionem fidejussoriam majores quàm minores. Cùm autem hujusmodi essoniatores causam absentiæ & excusationem sic prætenderint, non sufficit quòd dicant ita esse, nisi securitatem inveniant hoc

and the causes, for which a person may excuse his absence, are infinite. When therefore a person is entitled to make any of the aforesaid excuses, or any other which may be sufficient, whether the tenant has been beyond the sea or within it, whether the summons has been proved or not, when he cannot come, it is incumbent that he send some one to excuse him, who is called an essoiner, and who alleges that the excuse of the person summoned is such that he cannot come in these words:

3. The words of the excuse to be uttered by the essoiner in an essoin for bed-sickness.

That, when his lord was on his way coming to the court (if he has been essoined for sickness in coming whether from beyond the sea or from within it) that such an infirmity has come upon him after he was on his way coming towards the court from his own residence or from another person's, within the sea or beyond it that he cannot come, to gain or to lose, which is commonly termed *pro lucrari* or *pro perdere*, which indeed he says that he is prepared to prove. But because the proof is not incumbent on the essoiner, but on his lord, nor is it known whether the essoin be true or not, that the person summoned is willing to avow it. Likewise that the essoiner may not be burdened with finding bail and security, forsooth of sureties, which would be grievous and onerous to persons of humble station, and that the excuse may not perish, it is established that credit is to be given to the faith alone of the essoiner, which is not to be granted to persons of higher station, such as are those who hold in barony, who must find bail and security lest the judgments should be illusory, for persons of greater estate find more easily than persons of lower estate, bail and security, and particularly caution that the parties shall be forthcoming. But when essoiners of this kind have represented the cause of absence and the excuse, it is not sufficient that they say that it is so, unless they find security to prove it. But since

probare. Sed cùm non sit procurator ejus, qui ipsum essoniatorem destinavit, & ideo ad ipsum non pertineat probare statum vel factum alienum, nec attornato factum domini principalis,[1] & ideo dominus faciet legem si hoc commode fieri potest, & si dominus non venerit, attornatus jurabit in animam domini litis. Ideo
f. 338. affidabit essoniator, quòd habebit dominum suum ad alium diem ad warrantizandum dictum & essoniū suum, & ad probandum per sacramentum quòd tali infirmitate detentus fuit cûm esset in veniendo versus curiam, q̃ venire non poterit[2] &c. ut supra. Et ad quem diem si venerit, warrantizet essonium ita q̃ per sacramentum probet se esse ita impeditum secundùm q̃ essoniator suus in essonio suo proponendo exposuit. Sed videndum erit utrum probatio excusationis fieri debet judici, vel parti, quia si judici, remittere eam non poterit si voluerit p̃pter dilationem quæ sequeretur, & multitudinem p̃bationum. Si autem fieri debeat parti & non judici, non sine juris injuria poterit remitti sine consensu partis. Cùm igitur contingat aliquem abesse ex aliqua prædictarū causarum, vel aliqua alia causa, mittat essoniatorem suum qui ipsum excuset, & excusationem suam prætendat, secundum quod prædictum est. Habent etiam essonia ordinem sicut & actiones. Et itaque[3] essonium de malo veniendi infra regnum, si quis ita infirmatus fuerit in itinere versus curiam, quòd venire non possit nec pro lucrari nequè pro perdere. Et tale essonium de malo veniendi sequitur quandoquè essonium de malo lecti & de reseantisa, ubi agitur de ipso jure. Cûm autem quis ita essoniatus fuerit uno istorum vel utroquè infra regnum, non

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[1] "domino principali," MS. Rawl. C. 160.

[2] "potuit," MS. id.

[3] "Est itaque," MS. id.

he is not the agent of the person, who has destined him to be his essoiner, and therefore it does not pertain to him to prove the state or act of another, nor does it pertain to an attorney to prove the act of the lord his principal, and accordingly the lord shall make his law, if this can be done conveniently, and if the lord has not come, the attorney shall swear upon the soul of the lord of the suit. Accordingly the essoiner shall pledge his faith that he will produce his lord on another day to f. 338. warrant his statement and his essoin, and to prove by his oath, that he was detained by such an infirmity, when he was on his way coming to the court, that he could not come &c. as above. And on which day if he has come, let him warrant his essoin in such manner, that he should prove by his oath, that he was hindered according to what his essoiner has set forth in propounding his essoin. But it will have to be seen whether the proof of the excuse ought to be made to the judge or to the party, because if to the judge, he could not remit it, if he wished, on account of the delay, which would follow, and the multitude of proofs. But if it ought to be made to the party and not to the judge, it cannot without injury to right be remitted, unless with the consent of the party. When therefore it happens, that any one is absent from any of the aforesaid causes, or from some other cause, let him send his own essoiner, who may excuse him and allege his excusation, according to what has been said. Essoins have also their order just as actions. There is thus an essoin on account of sickness on the way within the kingdom, if any one has become infirm on the road to the court, that he could not come neither *pro lucrari* nor *pro perdere*. And such an essoin of sickness on the way is followed sometimes by an essoin of bed-sickness and of staying in doors, where the action is concerning the right itself. But when any one has been essoined for one of these causes or for both within the kingdom, it is not allowed

permittitur essoniato postmodum se transferre extra regnum ut sibi acquirat dilationem per essonium de ultra mare. Sunt quidem de ultra mare plura genera, scilicet de ultra mare & citra mare Græcorum, & est essonium de ultra mare Græcorum & de citra mare Græcorum, sicut in peregrinatione versus Sanctū Jacobum, vel ꝑpter aliquam aliam necessitatem, sicut exercitus vel hujusmodi in Allemania vel Hispania vel hujusmodi, in quibus essoniis dabitur dilatio ad minus quadraginta dierū & unius flud & unius ebbæ ad excusationē essoniati de simplici essonio de ultra mare. Si autē fiat mentio de aliquo loco remoto ꝑpter aliquam necessitatē (ut p̄dictum est), dabitur dilatio major ꝑ voluntate & arbitrio justitiariorū, secundum q̄ viderint expedire secundū distantiā locorū. In hoc casu induciæ sunt arbitrariæ, dum tamen ad minus quadraginta dierū ut supra. Et eodē modo fiat infra regnū in essoniis supradictis secundū locorum distantias, dum tamen ad minus quindecim dierū. Item est essonium de ultra mare,[1] ultra mare Græcorum, ut si quis profectus fuerit in peregrinatione usquè ad Terram Sanctam. Et quo casu distinguendum erit utrum in simplici peregrinatione versus Terram Sanctā, vel in generali passagio. Si autem in simplici peregrinatione, dabitur ei ad minus annus integer & unus dies, & sic dantur essoniato de ultra mare & citra mare Græcorum quadraginta dies ad minus & unum flud[2] & unum ebbe. Et postea cûm venerit in regnum, habebit essonium de malo veniendi, quod continet ad minus quindecim dies, & postmodū in suo casu essonium de malo lecti ad breve de recto, & unde quibusdam videt̄ (quod non est verum) quod dari debent

Britton, vi. ch. vii. § 3.

[1] "de ultra mare" omitted MS. Rawl. C. 160.

[2] "flode," MS. id.

to the person, who has been essoined, afterwards to transfer himself out of the kingdom that he may obtain a delay by an essoin for being beyond the sea. There are several kinds of essoins for being beyond the sea, and there is the essoin for being beyond the sea of the Greeks and for being within the sea of the Greeks, as on a pilgrimage to St. James, or on account of some necessity, as of serving in the army or of like sort in Germany or in Spain or in such countries, in which essoins a delay shall be allowed of at least forty days, and one one flood and one ebb, for the excusation of the person essoined by a simple essoin of being beyond the sea. But if mention be made of some remote place on account of some necessity (as abovesaid), a longer delay will be allowed according to the will and the discretion of the justiciaries, according to what they may consider to be fitting according to the distance of the localities. In this case the respite is arbitrary, provided however that it is a respite of forty days at least as above. And in the same way let it be done within the kingdom in the essoins abovesaid according to the distances of the localities, provided it be for at least fifteen days. Likewise there is the essoin of being beyond the sea, the essoin of being beyond the sea of the Greeks, as if any one has set forth on a pilgrimage to the Holy Land. And in which case a distinction must be made whether he has set out on a simple pilgrimage to the Holy Land, or on a general passage. But if on a simple pilgrimage there shall be allowed to him at least a whole year and one day, and so essoins are allowed for being beyond the sea and within the sea of the Greeks for forty days at least and one flood and one ebb. And afterwards when he has come into the kingdom, he shall have an essoin of sickness on the way, which comprises at least fifteen days, and afterwards in his own case an essoin of bed-sickness to a writ of right, and hence it seems to some (which is not true) that there ought to be allowed to a

essoniato de peregrinatione versus Terram Sanctam
f. 338 b. annus & dies, & de ultra mare Græcorū, & postea quadraginta dies & une flud[1] & une ebb. de simplici essonio de ultra mare, & sic essoñ de malo veniendi in regno, & essoñ de malo lecti in suo casu, quia ꝗlibet essoñ habet suum terminū ꝑ se ex alia parte. Si autē essoñ fiat de ultra mare Græcorum & de generali passagio, tunc remanebit loquela sine die, ubi videlicet essoñ non cōprehendit essoniatum infra regnum, & hoc ꝑpter privilegium ꝯruce signatorū, cùm non possit de eorum reversione certus terminus cōprehendi ꝑpter verba decreti domini papæ, ꝙ donec de ipsorum obitu vel reditu in regnū certissimè cognoscatur, omnia sua integra remaneant & quieta consistant. Est igitur ordo essoniorum talis, ꝙ ita fieri possunt descendendo a Terra Sancta usquè in regnum, sed non e contrario: ut si quis regno essoniatus fuerit de malo veniendi, nullum de cætero habebit de ultra mare. Et si de ultra mare simpliciter, de Terra Sancta nullum habebit essonium, approximare enim possunt regno cùm fuerint implacitati, elongare autem non. Est etiam aliud genus essonii non de malo veniendi sed de servitio dñi regis, ut si quis de necessitate fuerit detentus in servitio domini regis ꝑpter quod venire non possit ad curiam vocatus, & aliquando fit hujusmodi essonium de servitio domini regis in regno, & quandoquè ultra mare. Et de hujusmodi essonio de servitio domini regis, quandoquè ꝑcedit essonium simpliciter de malo veniendi, et quando-

[1] "flodel," MS. Rawl. C. 160.

person who is essoined for a pilgrimage to the Holy Land a year and a day, and for a pilgrimage beyond the sea of the Greeks, and afterwards forty days and one f. 338 b.
flood and one ebb for a simple essoin for being beyond the sea, and so an essoin for sickness on the way within the kingdom, and an essoin of bed-sickness in his own case, because each essoin has its own term by itself upon the other part. But if the essoin be made for being beyond the sea of the Greeks and on account of a general passage, then the trial shall be stayed without a day, where for instance the essoin does not comprise the essoinee within the kingdom, and this on account of the privilege of those who are marked with the cross, since no certain term can be comprised concerning their return on account of the words of the decree of the lord the pope, that until most certain information be received concerning their death or their return into the realm, all their affairs shall remain entire and be quietly stationary. There is thus an order of essoins of this character, which may be made by descending from the Holy Land down to the realm, but not in the contrary manner; as if a person has essoined himself for sickness on his way within the realm, he shall not have besides an essoin for being beyond the sea; and if for being beyond the sea simply, he shall not have an essoin for being in the Holy Land, for they may come nearer to the realm after they have been impleaded, but may not enlarge their distance from it. There is also another kind of essoin not for sickness on the way, but for the service of the lord the king, as if anyone has been from necessity detained by the service of the lord the king, wherefore he could not come into court when called, and an essoin of this kind is made for the service of the lord the king sometimes in the realm, and sometimes beyond the sea. And concerning an essoin of this kind for the service of the lord the king, sometimes the essoin proceeds simply concerning sickness in coming, and sometimes

què subsequitur semel, et quandoquè sæpius secundū necessitatē habitam in servitio p̃dicto, & valebit essoñ, quoties quis se essoñ de servitio domini regis, dum tamen warrantum habeat ad quemlibet diem breve domini regis, cùm servitium domini regis nulli debeat esse damnosum. Warrantizatur autem essonium multipliciter. Quandoquè per breve dñi regis, sicut de servitio suo, ubi non est necesse jurare, cûm dominus rex hoc testatur per literas suas q̃ sic detentus est in servitio suo. De servitio autem regis videndum, cui competat essonium, ad quod distinguendum utrum quis teneatur de necessitate ad tale servitiū, vel si fuerit cum aliquo qui tenetur sicut miles, vel serviens de familia, omnibus istis debet subveniri. Item si quis non teneatur p̃dictis rationibus, sed hoc affectaverit ut esset absens cùm non teneretur, tali non subvenit rex nisi de voluntate & gratia sua, quia non debet servitium dñi regis alicui esse damnosum. Item videndum, utrum essoniatus de servitio dñi regis venire potuit commodè vel non. Item cùm venire non posset co-
Britton, vi. ch. viii. § 1. modè, nec possit mittere, nec breve dñi regis in se contineat veritatem, cùm hæc omnia facere posset, in hoc sibi caveat cancellarius. Item videndum, utrum præventus esset tali sum̄onitione antequàm profectus esset in servitio dñi regis, & ita q̃ commodè facere poterit attornatum vel non, vel præventus sum̄onitione exercitus ante sum̄onitionem placiti, quòd attornare vel attornatum facere non potuit commodè, quia præcipit dominus rex q̃ statim visis literis vel cum omni

it follows once, and sometimes more often according to the necessity which has arisen in the service of the lord the king, and the essoin will be valid as often as a person has essoined himself for the service of the lord the king, provided however that he have as a warrant for any day a writ of the lord the king, since the service of the lord the king should not be damaging to any one. But an essoin is warranted in many ways. Sometimes by a writ of the king, as concerning his service, where it is not necessary to swear, since the lord the king attests this fact by his letters, that he has been thus detained in his service. But concerning the service of the lord the king it is to be seen, who is entitled to an essoin, in regard to which a distinction is to be made whether a person is bound of necessity, or if he has been with some one who is bound as a knight or a servant of the family, all such persons ought to be helped. Likewise if a person is not bound for the aforesaid reasons, but has affected it, that he might be absent when he was not bound, the king does not help such a person except of his pleasure and grace, because the service of the lord the king ought not to be damaging to anyone. Likewise it is to be seen whether a person essoined on account of the service of the lord the king could have come conveniently or not. Likewise when he could not come conveniently, nor could send any one, and the writ of the king does not contain in itself the truth, when he could do all these things, let the chancellor take care for himself in this matter. Likewise it is to be seen whether he has been anticipated by such a summons before he set forth on the service of the lord the king, and so that he could easily have constituted an attorney or not, or had been served with a summons to the army before the summons of the plea, so that he could not have conveniently attourned or appointed an attorney, because the lord the king enjoins "that forth-" with upon the sight of his letters and with all haste

festinatione sub brevi tempore, quòd atturnatum facere non potuit. Item si in servitio regis non ita remotus, quin sine periculo corporis vel damno domini regis
f. 339. venire possit, non arctatur: non enim debet warrantia de servitio dñi regis ei qui placitat esse injuriosa, non magis quàm ei qui implacitatur damnosa. Sed quoniam sunt variæ causæ excusationum (secundum q predictū est), & ex diversis causis & variis excusationum varia sequuntur essonia & diversa, ideo varietates essoniorum distinguamus per ordinem, & imprimis dicamus de essoniis de malo veniendi, q quidem multiplex est.

## Cap. III.

1. De excusationibus non venientis post summonitionem per essonium de malo veniendi, et de divisione essoniorum.

Essoniorum brevis divisio, quia aut est de malo veniendi aut de malo lecti: item essoniū de malo veniendi ita subdividitur, quia aut est de ultra mare, aut de citra mare. Item de ultra mare excusatur quis per essoñ de servitio dñi Regis æterni, sicut de Terra Sancta, habita tamen distinctione utrum peregrinatio ad Terram Sanctam simplex sit vel passagiū generale. Si autem simplex, dabitur essoniato terminus unius anni & unius diei. Si autē generale passagiū, poni debet loquela sine die quousq essoniatus redierit, & donec de ipsius obitu vel reditu certissimè cognoscatur ꝑpter privilegium cruce signatorū, dum tamē talis non sit sum̄onitione præventus, quo casu attornatū faciet vel remanebit indefensus.

' in a short time," so that he could not appoint an attorney. Likewise if he has been in the service of the king not so far remote, but that he could come without bodily danger to himself and without damage to the lord the king, he is not thereby kept away, for the warrant concerning the service of the king ought not to be injurious to him who impleads, any more than it ought to damage him who is impleaded. But since there are various causes of excusation (according to what has been said above), and from the various and divers causes of excusations various and divers essoins follow, therefore let us distinguish the varieties of essoins in order, and in the first place let us speak of the essoin of sickness in coming, which is of many kinds. f. 339.

## Chapter III.

1. Of the excusations of him who does not come after a summons by an essoin of sickness in coming, and of the division of essoins.

The short division of essoins is because either of sickness in coming or of bed-sickness. Likewise an essoin of sickness in coming is divided thus, for it is either for being beyond the sea or for being within the sea. Likewise for being beyond the sea one is excused by an essoin for the service of the Lord the Eternal King, as in the Holy Land, a distinction however having been made whether the pilgrimage to the Holy Land be simple or a general passage. But if it be simple, there shall be granted to the person essoined the term of one year and one day. But if it be a general passage, the trial should be postponed without a day, until the person essoined has returned, and until it be known for a certainty concerning his death or his return, on account of the privilege of those who are marked with the cross, provided however such a person be not anticipated by the summons, in which case he shall constitute an attorney or shall remain undefended.

2. Qualiter irrotulatur essonium de malo veniendi.

Et sic fiat irrotulatio hujusmodi essoniorū. A. qui ꝑfectus est ultra mare in generali passagio versus Terram Sanctam versus B. de tali placito per talem. Si autem simplex sit passagium & peregrinatio, tunc sic, A. qui ꝑfectus est peregrè versus Terram Sanctam ante sum̄onitionem, vel q̄ nulla fiat mentio de sum̄onitione, versus B. de tali placito per talem. Et si simplex sit peregrinatio & ultra annum & diem moram fecerit ulteriorem, excusatur ejus absentia (secundū quosdam) per essonium simplex de ultra mare, & sic habebit spacium xl. dierum & unius flud & unius ebbæ, & si adhuc moram longiorem protraxerit, habebit simplex essonium de malo veniendi de citra mare, per quod habebit ad minus spacium xv. dierum, quod verum est. Ad minus habebunt essoniati tantum tempus & ex causa majus tempus, secundum discretionem justiciarii. Et in hoc sunt dilationes arbitrariæ. Et quid si tunc non venerit? Procedatur ad defaltam contra eum, nisi forte contingat talem essoniari de morte ad cautelam. Si quis autem essoniatus fuerit essonio de ultra mare citra mare Græcorum, quòd profectus sit in servitio Domini Regis æterni in peregrinatione alia quàm ad
f. 339 b. Terram Sanctam, sicut apud Sanctum Jacobum vel alibi, habebit (secundum q̄ prædictum est) spatium prædictū quod competit de ultra mare, & similiter simplex essonium de malo veniendi de citra mare, & hæc omnia habebit ille qui essoniatus est de ultra mare in servitio Domini Regis æterni. Si autem sum̄onitione præventus fuerit antequam iter arripuerit versus Terram Sanctam ,vel ultra mare, non dabitur ei nisi simplex essonium de malo veniendi, & hæc omnia vera sunt, si debitus ordo essoniorum observetur, quia

2. In what way an essoin for absence beyond the sea is enrolled.

And so let there be an enrolment of the essoins in this manner. A. who has set forth beyond the sea in a general passage to the Holy Land against B. in such a plea through so-and-so. But if the passage and the pilgrimage be simple, then thus, A, who has set out on a pilgrimage towards the Holy Land before the summons, or that there be no mention of the summons, against B in such a plea through so-and-so. And if the pilgrimage be simple and he has prolonged his stay beyond a year and a day, his absence is excused (according to some) through a simple essoin of being beyond the sea, and so he shall have a space of forty days and one flood and one ebb; and if he has prolonged his stay still further, he shall have a simple essoin of sickness on the way on this side of the sea, through which he shall have at least a space of fifteen days, which is true. The parties essoined shall have at least so much time, and upon cause shown more time according to the discretion of the justiciaries. And in this matter the delays are discretional. And what if then he should not come? Let proceedings be taken against him for default, unless by chance it happen that he has been essoined for death by way of precaution. But if a person has been essoined with an essoin of absence beyond the sea within the sea of the Greeks, to wit, that he has set forth in the service of the Lord the Eternal King in another pilgrimage than that to the Holy Land, as to St. James or elsewhere, he shall f. 339 b. have (according to what has been said above) the space aforesaid, which is allowable for absence beyond the sea, and in like manner a simple essoin of sickness in coming from within the sea, and all these things the person shall have, who has been essoined for being beyond the sea in the service of the Lord the Eternal King. But if he has been anticipated by a summons before he has began his journey towards the Holy Land or beyond the sea, he shall have nothing allowed to him but a simple essoin for sickness in coming, and all these things are true, if

esto q, cùm quis ante sum̄onitionem profectus sit & competant ei omnia prædicta essonia, & primò se faciat essoniari de simplici essonio de malo veniendi, non habebit ulteriùs regressum ad alia essonia de ultra mare. Et est ratio, quia si se essoniat de malo veniendi simpliciter, concedit per tale essonium q fuit in veniendo à domicilio suo in Anglia, & infirmatus per viam veniendo versus curiam, q ad curiam venire non potuit, & unde si postea se essoniare voluerit de aliquo prædictorum modorum de ultra mare, non allocabitur ei essonium, quia post tale essonium de malo veniendi non debet quis se transferre ad partes transmarinas, ut per hoc sibi acquirat ulteriores dilationes, cùm lites potius restringendę sunt quàm laxandæ. Et eodem modo si quis simpliciter essoniatus fuerit de ultra mare sine aliqua adjectione, cùm ei competeret essonium de Terra Sancta, nunquam ei postmodum allocabitur essonium de Terra Sancta, quia postquàm taliter se essoniaverit sub certo loco & à propinquo, ad remotiora se transferre non debet, ut inde sibi acquirat ulteriores dilationes. Nunquam verò pro aliquo essonio de ultra mare remanebit loquela sine die, nisi quis profectus fuerit in Terram Sanctam pro passagio generali hoc modo.

3. Essonia de servitio domini regis de ultra mare

Essonia vero de malo veniendi de citra mare simplicia sunt, & quandoque præcedunt hujusmodi essoniis essonia de servitio domini regis de citra mare, & quæ non sunt essonia de malo veniendi, quia non est talis

the due order of essoins be observed, for let it be, that when a person has set out before the summons and he is entitled to all the aforesaid essoins, and in the first place he causes himself to be essoined with the simple essoin of sickness in coming, he shall not have further any recourse to the other essoins of absence beyond the sea. And the reason is, because if he essoins himself simply for sickness in coming, he admits by such an essoin that he was on his way coming from his residence in England and was invalided on his way in coming to the court, so that he could not come to the court, and hence if he shall have afterwards desired to essoin himself in any of the aforesaid ways of being beyond the sea, the essoin shall not be allowed to him, because after such an essoin of sickness in coming a person ought not to transfer himself to parts beyond the sea, that he may thereby obtain for himself further delays, since lawsuits are rather to be restrained than facilitated. And in the same way if a person has been simply essoined for absence beyond the sea without any addition, when he was entitled to an essoin for being in the Holy Land, there will never be allowed to him an essoin for absence in the Holy Land, because after he has in such manner essoined himself in respect of a certain place and from a near place, he ought not to transfer himself to more remote parts, that he may thereby obtain further delays. But the trial will never be stayed indefinitely for any essoin of absence beyond the sea, unless a person has set out for the Holy Land on a general passage in this manner.

3. Essoins for the service of the lord the king beyond the sea.

But essoins for sickness in coming from some place within the sea are simple, and sometimes this kind of essoins are preceded by essoins for the service of the lord the king within the sea, which are not essoins for sickness in coming, because such a person is not invalided by the way in coming to the court, but he is detained by the service of the lord the king, so that he cannot come. For essoins of this kind may precede and may follow, not

in veniendo versus curiam infirmatus per viam, sed per servitium domini regis detentus, quòd venire non possit. Præcedere enim poterunt hujusmodi essonia & subsequi non semel sed sæpius, quamdiu quis fuerit in servitio domini regis, dum tamen habet ad manum ad quemlibet diem warrantum suum, secundum distinctionem prenotatam. Et quando quis se essoniaverit de servitio domini regis, admitti debet essonium & allocari, & dies dari, cùm de voluntate domini regis non sit disputandum, & si ad diem datum warrantum non habuerit, indefensus remanebit.

4. Placita specialiter excepta, in quibus non jacet essonium de servitio domini regis.

Sunt placita tamen quædam specialiter excepta, in quibus non jacet essonium de servitio domini regis propter necessitatem, ut in assisa ultimæ præsentationis: ut de termino S. T. anno regis H. xiv., in fine rotuli, in com̃ Suff., assisa ultimæ præsentationis de ecclesia de Trillaw. Ad idem facit quod habetis in rotulo de banco anno regis H. xxxviii. in comitatu Kanc. inter S. Cant. archiepiscopum & Robertum de Sancto Johanne de ecclesia de Eniford,[1] & talem necessitatē inducit lapsus temporis. Item nō jacet essoñ de servitio dñi regis quādoq̃ ꝑpter favorē, sicut in causa dotis, quia statim post essoñ legitima de malo veniendi nisi veniat sum̃onitus, ꝓcedatur ad defaltam. Item ꝑpter favorem minoris ætatis quandoq̃ (& secundum quosdam), sicut in assisa mortis antecessoris. Item quandoq̃ in odium spoliationis, & generaliter in omnibus assisis capi poterit per defaltam, cùm tantum operetur absentia summoniti quantum præsentia. Item non jacet de jure quāvis aliquando de gratia in persona ejus, qui non est immediate in servitio cum ipso rege sed cum alio. Item nec in ꝑsona ejus, qui affectaverit esse in ejus servitio, cùm ad hoc non teneatur. Item nec in persona ejus, qui continuè & assiduè est

f. 340.

Britton, vi. ch. viii. § 1.

[1] "Eyneford," MS. Rawl. C. 160.

once but repeatedly, as long as a person may be in the service of the lord the king, provided however that he have at hand his warrantor for a certain day, according to the distinction previously noted. And when a person has essoined himself for the service of the lord the king, his essoin ought to be admitted and allowed, and a day ought to be given to him, since no dispute is to be permitted concerning the will of the lord the king, and if upon the day given to him he shall not have had a warrantor, he will remain undefended.

4. Pleas specially excepted, in which an essoin for the service of the lord the king does not lie.

There are some pleas specially excepted, in which an essoin does not lie for the service of the lord the king, on account of necessity, as in an assise of last presentation, as in Holy Trinity term in the fourteenth year of king Henry in the county of Kent, between Stephen, archbishop of Canterbury, and Robert of St. John, concerning the church of Eniford, and lapse of time causes such necessity. Likewise an essoin for the service of the lord the king does not lie sometimes on account of favour, as in a cause of dower, because immediately after the legitimate essoins for sickness in coming, unless the party summoned comes, let proceedings be had to a default. Likewise on account of favour for minority sometimes (and according to some), as in an assise of mortdancester. f. 340. Likewise sometimes in hatred of the spoliation, and generally in all assises it may be taken by default, since the absence of the party summoned operates as much as his presence. Likewise it does not lie of right, although sometimes of grace, in the person of him who is not immediately in service with the king himself, but with another person. Likewise not in the person of him who has volunteered to be in his service, when he is not bound to it. Likewise not in the person of him, who is continuously and assiduously in the service of the lord the king, except at times when they have been in an expedition. Likewise it does not lie in the person of an attorney, although he may represent the person of his lord, because such a person ought to be appointed an

in servitio domini regis, nisi temporibus quibus fuerint in expeditione. Itē nō jacet in ꝑsona attornati, quamvis personam domini reꝑsentet, quia talis fieri debet attornatus, qui sequi possit & velit, alioquin sibi imputari debet qui talem attornatum elegit. Item non jacet essoñ de servitio domini regis in ꝑsona ejus qui pars esse non possit in juditio, sicut nec aliud essonium, sicut in persona juratorum. Item quatuor militum ad testificandum visum vel statum alicujus. De quatuor militibus vero missis in coñ cum recordo ad audiendū judicium suum (cum sint quasi partes in judicio) credo aliud esse dicendū. Warrantia vero de servitio domini regis nō est concedenda in omnibus, nec sine causa rationabili, cū si passim & indifferenter concedatur, possit verti in alterius præjuditium, & non potest rex aliquid cōcedere nisi id q̄ de jure fieri potest, & cùm aliquando de voluntate domini regis cōcedatur, non erit omnino ꝑ justic. quassanda, sed voluntas regis expressa inde erit expectanda.

5. Si quis implacitatus fuerit a duobus, et ad unum placitum essoniaverit se de malo lecti et ad aliud de malo veniendi.

Est etiā simplex essoniū de malo veniendi q̄ excusat ad tēpus, & q̄ aliā habet naturā in multis q̄m essonia supradicta, s. quis legitimè sum̄onitus vel etiā nō legitimè infirmatus fuerit ꝑ viā q̄ venire nō possit, & destinaverit aliquē ad excusandā suā absentiā, qui sic ꝑponat essoniū suū corā justic. si fuerit de modo requisitus & dicat: Essonio talem dominū meū, q̄ cum esset in veniendo versus curiā, talis infirmitas accidit ei per viam, q̄ venire non potest ꝑ lucrari nec ꝑ perdere, & hoc paratus sum docere, sicut curia cōsideraverit &c. Qui quidē si interrogatus dixerit q̄ reliquit eum domi, essoniū (secundū quosdā) nō allocabitur, nisi hoc sit de necessitate, q̄ esse poterit, licet quis â domicilio suo non recedat, ut si alicui in uno placito adjudicatus sit languor, & in alio summonitus sit ad

attorney, who can and will pursue, otherwise he who has elected such an attorney must impute to himself the consequences. Likewise an essoin for the service of the lord the king does not lie in the person of him, who cannot be a party in the judgment, just as no other essoin, as in the person of the jurors. Likewise of the four knights to testify the view or state of anyone. But concerning the four knights sent into the county with a record to hear their judgment (since they are as it were parties in the judgment) I believe it is to be said otherwise. But a warrant concerning the service of the lord the king is not to be granted in all matters, nor without a reasonable cause, since if it were to be granted everywhere and indifferently, it might be turned to the prejudice of another, and the king cannot grant anything, except what may be done of right, and when anything is granted of the pleasure of the lord the king, it will not be allowed to be quashed by the justiciaries, but the express will of the king will have to be awaited.

5. If a person has been impleaded by two parties, and he has essoined himself to one plea for bed-sickness, and to another for sickness in coming.

There is also a simple essoin for sickness in coming which excuses for a time, and which has another nature in many respects than the essoins above mentioned, to wit, if a person lawfully summoned or even not lawfully summoned has been invalided on the way, that he could not come, and has despatched some one to excuse his absence, who thus propounds his essoin before the justices, if he has been required to state the mode of it, and says, I essoin so-and-so my lord, that, when he was coming to the court, such an infirmity fell upon him by the way, that he cannot come *pro lucrari* nor *pro perdere*, and this I am prepared to show according as the court has determined, &c. Who indeed, if upon being questioned he has said that he left him at home, the essoin (according to some) shall not be allowed to him, unless it be from necessity, which may be, although a person does not withdraw himself from his residence; as if languor be adjudged to anyone in one plea, and in another he has been summoned to answer and he is

respondendū & cōpetat ei essoniū de malo veniendi, si sine licentia surrexerit, amittere poterit & attornatū facere nō possit. Admittitur igitur essoniū de necessitate, licet in veniendo nō fuerit infirmatus, & etiā magis excusat lāguor qm malū trāsiens. Eodē modo dici poterit si vocatus fuerit in aliquo placito ad warrantū.

6. Si duo placita, de quibus unum de malo lecti, et aliud de malo veniendi.

Itē allocatur quandoq̃ essoniū, q̣ aliàs non esset allocādū, ut si in uno placito lāguor fuerit ei adjudicatus, & in alio placito omnia habuerit essonia, & ad diē sum̄onitionis suæ de facto se essoniaverit cū venire nō possit, nec attornatū fecerit, allocabitur ei essoniū ꝑpter talē necessitatē de cōsilio curiæ, licet nō possit de jure. Eodē modo si vir & uxor implacitati fuerint & ambo essoniati fuerint de malo veniēdi, & unus illorū postea se essoniaverit de malo lecti, & cū lāguor ei sit adjudicatus alius cōparuerit, habebit diē ex tali causa, & ad diē illū essoñ vel diem diffusum quousq̃ languor ꝑterierit, sed nūquā habebit essonium super essoñ in tali necessitate, quia sic cadere posset in defaltam.

f. 340 b.

7. Quis se possit essoniare.

Itē quis se possit essoniare videndū, & quando, & in quibus placitis, & quādo jacet essoñ, & quādo nō, & quid juris, si tenens fecerit attornatos plures vel unū. Itē si plures sint petentes & unus tenens vel è converso vel plures petentes vel plures tenentes, & aliquis eorū defaltā fecerit. Itē si tenens unus vel plures warrantū vocet unum vel plures, & aliquis eorum defaltā fecerit unus vel plures. Itē qualiter essonia judicantur. Itē qualiter redimūtur. Quis se essoniare possit videndū & quis non? Et sciendū q̣ se essoniare poterit quilibet cui non ꝑhibetur, tam masculus quàm

entitled to an essoin for sickness in coming, if he has left his bed without permission, he may lose his essoin and he cannot constitute an attorney. The essoin is therefore admitted of necessity although he has not been invalided in coming, and languor excuses even more than a passing illness. In the same way it may be said, if he has been called in any plea to warrant.

6. If there be two pleas, of which one is essoined for bed-sickness and the other for sickness in coming.

Likewise an essoin is sometimes allowed which at other times would not be allowed, as if in one plea languor has been adjudged, and in another plea he has every essoin, and on the day of his summons he has essoined himself in fact when he could not come, and he has not constituted an attorney, there will be allowed to him an essoin on account of such necessity upon the advice of the court, although he could not have it of right. In the same manner if a husband and wife have been impleaded, and both have been essoined for sickness in coming, and one of them has afterwards essoined himself for bed-sickness, and when languor has been adjudged to him the other has appeared, he will have a day from such a cause, and on that day an essoin or a day at large until the languor has passed away, but he shall never have an essoin upon an essoin in such a necessity, because he might thus fall into a default. f. 340 b.

7. Who may essoin himself.

Likewise we must see who may essoin himself, and when, and in what pleas, and when the essoin lies, and when not, and what is his right, if a tenant has constituted several attorneys or one. Likewise if there be several claimants, and one tenant, or conversely either several claimants or several tenants, and one of them has made default. Likewise if one or several tenants call one or several warrantors, and some of them have made default one or more. Likewise in what way essoins are judged. Likewise in what way they are redeemed. We must see who can essoin himself and who not. And it is to be known that any one may essoin himself who is not prohibited,

fœmina, dum tamē plenæ ætatis extiterit. Minor autē se essoniare non poterit de quo constiterit q̄ minor sit, nec etiam cōtra ipsum admittitur essoniū ab aliquo majore & maximè in assisa, quia cū major p̄sens sit nihil dicere possit cōtra assisam quare remaneat, & si forte cōtingat q̄ minor se essoniaverit cùm tenens fuerit in loquela, in quibus infra ætatem respondere teneatur, ubi feoffatus fuerit infra ætatem, & de aliis, fiat mentio sup essonium in margine q̄ minor sit, & ad hoc q̄ contra minorem jaceat essonium & in p̄sonam minoris, distinguendum erit inter ætatē & ætatē, & ad hoc quòd locū habeat essonium, utrum tenementum sit feodū militare vel socagiū: secundum q̄ inveniri poterit de itinere M. de P. in com̄ Suff. anno regis H. x., & de itinere ejusdē in comitatu Warw. anno regis H. v., ubi dicitur, q̄ si quis habuerit quatuordecim annos, talis ætas sufficit quantū ad socagium petēdum, & ita admittitur essonium tam contra ipsum quàm pro eo, & q̄ essoñ non jaceat in p̄sona minoris contra minorem in causa possessionis, inveniri poterit in itinere[1] in comitatu Salop., assisa mortis, si Vincētius. Ratio autem est quare in persona minoris non jaceat essoñ, quia jurare non potest nec essonium warrantizare. Item ratio quare in persona majoris non jaceat essonium cōtra minorem, quamvis major jurare possit in causa possessionis, est, quia si major præsens esset in assisa capienda, nihil dicere posset cōtra assisam quare remaneret. Sed quid si minor & infra ætatem conveniatur & implacitetur cum uxore sua de jure & hereditate uxoris suæ, quæritur an propter ætatem minoris debeat placitum remanere? & verum est quòd non,

[1] "itinere," after this word there is a blank space in MS. Rawl. C. 160.

male as well as female, provided he is of full age. But a minor will not be able to essoin himself concerning whom it is ascertained that he is a minor, nor is an essoin admissable against him on the part of a major and chiefly in an assise, because when a major is present he can say nothing against the assise why it should be stayed, and if by chance it should happen that a minor has essoined himself, when he is engaged as a tenant in a trial, in things in which he may be bound to answer when under age, where he has been enfeoffed when under age, and concerning other things, let mention be made upon the essoin in the margin that he is a minor, and upon this that an essoin lies against a minor and against the person of the minor, a distinction will have to be made between age and age, and upon this that an essoin has place, whether the tenement be a military fee or a socage, according to what may be found in the Iter of Martin de Pateshull in the county of Suffolk in the tenth year of king Henry, and in the Iter of the same in the county of Warwick in the fifth year of king Henry, where it is said, that, if a person has fourteen years, such an age suffices as regards claiming a socage tenement, and so an essoin is admitted as well against himself as on his behalf; and that an essoin does not lie in the person of a minor against a minor in a cause of possession may be found in an iter in the county of Salop, an assise of mortdancester, if Vincentius. But the reason, why an esssoin does not lie in the person of a minor, is because he cannot swear nor warrant an essoin. Likewise a reason wherefore an essoin does not lie in the person of a major against a minor, although a major may swear in a cause of possession, is, because if a major were present in the holding of an assise, he could say nothing against the assise wherefore it should be stayed. But what if a minor under age he convened and impleaded with his wife concerning the right and inheritance of his wife, it is asked whether on account of the age of the minor the plea ought to be stayed? and it is true that it ought not,

licet uxor sine viro respondere non debeat. Et quid si in curia domini regis implicitati fuerint de uno & eodem tenemento, & eodem die ubi vir minor se essoniare non possit nec attornatum facere, videtur quòd amittere debent[1] in minori curia per defaltam, quod esset iniquum, cùm nihil sit quod eis debet aut possit imputari. Nullum autem aliud supererit remedium, nisi quòd major curia warrantizet contra processum minoris curiæ, & quid si ambæ curiæ pares extiterint? Item non jacet essonium in persona disseysitoris, quia licet ipse non venerit, ballivus venire poterit. Item nec in persona ballivi per se, quia dominus venire poterit per se sine ballivo, cùm uterque illorum attachiatus sit sub disjunctione: & non sufficit si unus se essoniaverit, nisi uterque fuerit essoniatus, quamvis
f. 341. sufficiat quòd unus eorum veniat. Revera non jacet essonium in odium spoliationis, quia denegari debet eis dilatio xv. dierum et sum̄onitio rationabilis, et ideo maximè, quia tantum operatur eorum præsentia quantum absentia, quia sive venerit sive non, ꝑpter hoc non remanebit assisa. In persona tamen spoliati & querentis bene jacebit essonium. Item non jacet essonium in ꝑsona ejus qui cōmissus est aliquibus ꝑ ballivū, ut respō̃deat[2] pro eo, sicut corpus pro corpore. Itē non jacet in ꝑsona ejus de quo ꝑceptū est vic. q̄ faciat eum venire vel q̄ habeat corpus ejus, dum tamē p̃cesserit solennitas attachiamentorū, quamvis sine essonio. Si autem hic fuerit primus dies attachiamenti, sequetur essoniū, quia ad quamlibet sum̄onitionem vel attachiamentum cùm de quocunq; placito de jure sequi debet essoniū. Sed ubi nullū placitum, ibi

[1] "debeant," MS. Rawl. C. 160. [2] "respondeant," MS. id.

although the wife ought not to answer without her husband. And what if they have been impleaded in the court of the lord the king concerning one and the same tenement and on the same day, when the male minor could not essoin himself nor make an attorney, it seems that they ought to lose in the minor court by default, which would be inequitable, since there is nothing which could or ought to be imputed to them. But no other remedy would remain over, except that the major court should warrant against the process of the minor court, and what if both courts should be equal? Likewise an essoin does not lie in the person of the disseysor, because although he has not come, his bailiff might come. Likewise not in the person of the bailiff by himself, because the lord may come by himself without his bailiff, when each of them has been attached disjunctively; and it is not sufficient if one has essoined himself, unless each has been essoined, although it would be sufficient that one of them should come. In truth an essoin does f. 341.
not lie in hatred of the spoliation, because there ought to be denied to them a delay of fifteen days and a reasonable summons, and therefore chiefly because their presence operates as much as their absence, because whether they have come or not, the assise shall not be stayed on that account. An essoin however will fitly lie in the person of the party spoiled and complaining. Likewise an essoin does not lie in the person of him, who has been committed by the bailiff to the charge of any persons that they should answer for him, like as body for body. Likewise it does not lie in the person of him concerning whom it has been enjoined to the viscount, that he should make him come, or that he should present his body, provided however the solemnity of an attachment has preceded, although without an essoin. But if this has been the first day of an attachment, an essoin will follow, because an essoin ought to follow of right upon every summons or attachment with every plea whatsoever. But where

nullum essonium. Ut si quis p̃ceperit ballivo suo vel mādaverit q̃ sit ad certū diem redditurus de balliva sua ratociniū, ut si rex p̃cipiat vicecom̃ vel majori q̃ rationē reddant et cōpotum de balliva sua. Si autē vicecom̃ vel major summoniti sint ad respondendū quo warranto vel quo jure ballivam suam tenuerit, aliud erit: quia ibi erit placitum.. Item non jacet essoniū in p̃sona ejus qui attornatum fecerit, nisi ambo se forte essoniaverint. Itē non jacet in p̃sona ejus qui se semel essoniaverit, donec cōparuerit. Item non jacet in p̃sonis appellatorum de forcia nec in appello de pace, plagis & roberia, ubi illud dicendū est quòd domi remaneant, donec illi de facto convincantur. Sed si non venerint, p̃ essonium excusantur. Item non jacet ubi aliqua partium se essoniaverit, ignorans q̃ adversarius suus mortuus sit vel aliquis ex participibus suis. Itē non jacet ubi placitū ipso jure sit nullum, scilicet ubi breve non convenit petitioni & hujusmodi. Item non jacet in actione personali, postquam q̃is attachiatus fuerit, scilicet ubi primò se essoniaverit. Item ubi p̃ceptum est vicecomiti q̃ distringat per terras & catalla. Item non jacet ubi dies datus est, ut de die in diem, vel si datus fuerit dies sine essonio de consensu partium, quia conventio vincit legem in hoc casu: ut de termino S. Michaelis anno regni regis Henrici decimosexto incipiente decimoseptimo, in comitatu Essex, de Ethone filio Wilhelmi, cui non fuit essonium allocatum, quia dies datus fuit sine essonio quamvis diffusus p̃pter consensum, quod aliàs non esset. Nec etiam ipse dominus rex potestatem haberet dandi diem sine essonio, nec alius multo fortiùs, cùm hoc

Britton, vi. ch. ix. Fleta, 384, 385.

there is no plea, there is no essoin. As if a person shall have enjoined upon his bailiff or shall have ordered him that he should render on a certain day an account of his bailivry, as if the king shall have enjoined upon a viscount or a mayor that he should return an account and reckoning of his bailivry. But if the viscount or the mayor have been summoned to answer by what warrant or by what right he holds his bailivry, it will be another thing, because there a suit will be. Likewise an essoin does not lie in the person of him who has constituted an attorney, unless both have by chance essoined themselves. Likewise it does not lie in the person of him who has once essoined himself, until he has appeared. Likewise it does not lie in the persons of those who are accused of forcible assault nor on a charge of breaking the peace, or of blows and robbery, where it is to be said that they should remain at home, until they are convicted of the fact. But if they have not come they are excused through an essoin. Likewise it does not lie, where any of the parties has essoined himself, being ignorant that his adversary has died or some of his associates. Likewise it does not lie, where the plea is null in law, for instance where the writ does not agree with the petition and such like. Likewise it does not lie in a personal action, after that a person has been attached, to wit, where he has at first essoined himself. Likewise where the viscount has been enjoined to distrain upon the lands and the chattels. Likewise it does not lie where a day has been given, as from day to day, or if a day has been given without an essoin by the consent of parties, because a convention overcomes the law in this case, as in St. Michael's term in the sixteenth and seventeenth years of the reign of king Henry in the county of Essex, concerning Etho the son of William, to whom an essoin was not allowed, because a day was given to him without an essoin, although diffuse, on account of consent, which otherwise would not have been. Nor would even the lord the king himself have power to fix a day without an essoin, and another person still less so since he can-

facere non possit sine juris injuria sine cõsensu partium, quia ex quo hoc voluit, juris beneficium ei non subvenit cõtra voluntatem suam, quia sic invito conferetur beneficium &c. Item non jacet, si ille qui se essoniat visus fuit in curia antequam reddatur essonium. Item non jacet post defaltam postquam terra capta fuerit in manum domini regis. Item non jacet, ubi ex virtute mandati non imponitur vocato necessitas veniẽdi nisi ad voluntatẽ suam, ut si dicatur q̃ veniat si sibi viderit expedire. Itẽ non jacet ex virtute mãdati, s. ad volũtatẽ mãdantis. Et dicat in curia q̃ velit placitare. Item non jacet si mandetur vel p̃cipiatur vic. vel ballivo, majori, vel p̃posito villæ, vel burgi, vel civitatis, q̃ veniat redditurus compotum, vel
f. 341 b. responsurus de tempore suo, quia ibi nullum placitum nec aliqua controversia: Item quis?[1] Et sciendum q̃ tam plures tenentes quàm unus, & tunc refert utrum plures tenentes in uno brevi tenuerint in cõmuni simul & p̱ indiviso, vel separatim & p̱ diviso, partita inter cohæredes hæreditate. Si autem simul & p̱ indiviso, quilibet eorũ unicum habebit essonium (si voluerit) de malo veniendi simul & eodem die, vel vicissim & diversis diebus, secundum q̃ elegerint, donec quilibet eorum unicum habeat essonium (nisi aliud sit de consuetudine), quia plura non habebunt antequam simul comparuerint, licet illi qui primò fuerint essoniati sæpius cõpareant, quia semp̱ diem habebunt quousq̱ omnes

[1] "Item quis?" omitted MS. Rawl. C. 160.

not do this without injury to right without the consent of parties, because from the time he has wished it, the benefit of the law does not succour him against his will, because a benefit, &c. would be so conferred upon a person unwilling to receive it. Likewise an essoin does not lie, if the person who essoins himself has been seen in the court before his essoin was returned. Likewise it does not lie after a default after that the land has been seized into the hand of the lord the king. Likewise it does not lie, when in virtue of a mandate the necessity of coming is not imposed upon the person called except with his own will, as if it be said that he should come if it seems to him expedient. Likewise it does not lie in virtue of a mandate, that is at the will of the mandator. And let him say in court that he wishes to plead. Likewise it does not lie, if it has been commanded or enjoined to a viscount or a mayor, or a provost of a township, or of a borough, or of a city, that he should come in order to render his account, or in order to answer concerning his time, because where there is no plea, there is no controversy. Likewise who may essoin himself? f. 341 b. And it is to be known that as well several tenants as one tenant, and then it matters whether several tenants in one writ have held in common together and in an undivided whole, or separately and in divided parts, the inheritance having been parted amongst the coheirs. But if together and in an undivided whole, each of them shall have a single essoin, if he pleases, for sickness in coming together and on the same day, or in turns and on different days, according as they shall have chosen, until each of them has had a single essoin (unless it be otherwise from custom), for they shall not have more essions until they have appeared together, although those, who have been essoined the first, shall have frequently appeared, for they shall always have a day assigned to them until they have all appeared together, because an essoin does not follow

simul cõparuerint, quia ad omnem apparitionem non sequitur essonium, q si ita esset, ita fierent dilationes innumerabiles. Si autem antequam cõpareant unus moriatur ex pluribus tenentibus in communi, cadit breve, licet videatur cõtrarium, cùm pars sua accrescat superstitibus per jus accrescendi, qui revera die impetrationis partẽ illam non tenuerunt, nec quantũ ad tenẽdam partẽ illam in communi subfuit causa impetrandi. Si autẽ inter plures partita sit hæreditas, & unus tantum de parte sua implacitatus fuerit, unicũ habebit essonium antequàm comparuerit si voluerit, & in persona sua quantum ad ptem illam terminabitur negotium, nisi ita sit q sic respondeat, q sine participibus suis non debeat respõdere, & quo casu summonendi sunt participes quòd sint ad respondendũ cum eo & sine quibus &c. Et etiam quo casu quilibet ex participibus (qui dicuntur participes) unicum habebit essonium ante apparitionẽ, sed non quasi unus hæres & particeps, & vicissim, donec constiterit eos esse participes. Et cùm p̃sentes sint omnes & dedicere non possunt cùm sint participes, extunc erunt quasi unus hæres. Divisio enim hæreditatis facit unitatẽ juris esse plures, & per hoc hæredes esse plures; defensio enim omnium revocat unitatem juris, & sic iterum facit cõmunes defensio plures personas quasi unum corpus & unum hæredem ppter juris unionem, quia si tenens amiserit, omnes tenentur contribuere. Si autem plures sint tenentes in eodẽ brevi, sed tamen diverso jure & non ut participes, quilibet habebit essonium p se & non vicissim ut supra, quia hic sunt diversa placita & ibi tantum unum & non plura. Si autẽ sint ibi plures tenentes sicut vir & uxor, licet non teneant in communi ut supra dictum est, tamen quilibet eorũ

[1] "in casu vero," MS. Rawl. C. 160.

upon each appearance, because if it were so, the delays would thus be innumerable. But if before they appear, one of several tenants in common dies, the writ falls, although the contrary would seem, since his share accrues to the survivors by the right of accretion, because in truth on the day of suing out the writ they did not hold that part, nor was there as regards their holding that part in common any ground for suing out a writ. But if the inheritance be parted amongst several, and one only has been impleaded concerning his share, he shall have a single essoin before he has appeared, if he chooses, and in his person as far as regards that part the business will be terminated, unless it should happen that he thus answers, that without his coparceners he ought not to answer, and in which case the coparceners are to be summoned that they be present in order to make answer together with him and without whom &c. And also in which case each of the coparceners (who are called coparceners) shall have a single essoin before his appearance, but not as if one heir and coparcener, and in turns, until it has been established that they are coparceners; and when they are all present and cannot gainsay that they are coparceners, thenceforth they will be as it were one heir. For the division of the inheritance makes the unity of right to be in several persons, and accordingly the heirs to be several in number, for the defence of all recalls the unity of right, and so the common defence makes again several persons to be one body and one heir on account of the union of right, for if the tenant has lost, all are bound to contribute. But if there are several tenants in the same writ, but nevertheless with a diverse right and not as coparceners, each will have an essoin by himself, and not in turns as above, because here there are divers pleas, and there only one and not several. But if there be there several tenants, as for instance a husband and a wife, although they do not hold in common as above said, nevertheless each of them shall have a single

unicum habebit essonium simul vel vicissim, tum ꝑpter unitatē juris tum ꝑpter unitatem sanguinis, cùm sint una caro vir & uxor, q̄ non est in casu supradicto, & unde si unus illorum defaltam fecerit, ambo puniūtur ꝑ defalta unius. In hoc casu vero[1] supradicto nō nisi ille qui defaltā fecerit, quia in casu supradicto ꝑticipū jus cōmune recipit divisionē, jus autē viri & uxoris &[1] de re uxoria nullā recipit divisionē, & maximè cùm res sit ꝑpria uxoris & non viri, cùm ad virū non ꝑtineat nisi tantū custodia ratione uxoris. Plures vero tenentes (licet teneāt in cōmuni) quilibet suum habebit essoniatorē, quia diversæ sunt ꝑsonæ & diversæ excusationes. Cùm autē omnes participes vel tenentes simul in curia comparuerint, & contingat q̄ tenens unus vel plures vel unus ex pluribus se essoniaverit, vel dies datus fuerit partibus si p̃sentes fuerint, sicut f. 342. dies amoris sub specie pacis, vel post visum petitum, vel warrantum vocatū, vel ꝑ defectu recognitorū, vel alia quacunque ratione, poterunt tenentes essonia sua reincipere sicut primo die sum̄onitionis. Si autē plures sint tenentes, qui tenuerint pro diviso quilibet ꝑtem suā, & implacitati fuerint ab uno vel diversis personis in cōmuni, quilibet habebit unicū essonium & ꝑ se, donec omnes simul comparuerint, & non vicissim. Si autem unus defaltā fecerit, hoc erit sibi soli damnosum & non participibus, si amiserit, & nec versus participes regressum habebit, sed sibi ipsi negligentiam ꝑpriam imputare poterit. Cùm autē omnes præsentes fuerint, tunc ꝑcedat negotium quasi in communi, quia nullus sine alio respondebit, sive plures fuerint petentes in communi vel diverso jure, quia bene contingit

[1] "et" omitted MS. Rawl. C. 160.

essoin together or in turn, as well on account of the unity of right as of the unity of blood, since man and wife are one flesh, which is not in the case above said, and hence if one of them has made default, both are punished for the default of one. But in this case above said only he who has made default is punished, because in the case abovesaid the common right of the coparceners admits of division, but the right of the husband and wife respecting an estate of the wife's admits of no division, and chiefly when the estate is the proper estate of the wife and not of the husband, since there only belongs to the husband the custody of the estate in regard of his wife. But if the tenants are more than one (although they hold in common), each shall have his own essoiner, because the persons are divers and the excuses are divers. But when all the parceners or tenants shall have appeared together in court, and it happens that one tenant or several, or one out of several, has essoined himself, or if a day has been given to the parties, as a day of f. 342.
love under the form of peace, or after a view has been claimed, or after a warrantor has been called, or on account of default of recognisors, or for any other reason whatsoever, the tenants may recommence their essoins, as on the first day of the summons. But if there be several tenants, who have held each his own part as divided from the others, and they have been impleaded in common by one or by different persons, each shall have a single essoin and by himself, until all have appeared together, and not in turns. But if one has made default, this shall be damaging to himself alone and not to his parceners, if he has lost, and he shall have no recourse against his parceners, but he may impute to himself his own negligence. But when all shall have been present, then let the business proceed as it were in common, because none shall answer without the other, whether there be more than one claiming in common, or by a different right, because it well happens, that some out of several may be able to retain, whether an in-

q quidam ex pluribus poterunt retinere, sive ab uno vel pluribus petatur hæreditas, cōmunis à cohæredibus sed divisa, si tamen ab uno jure vel pluribus petatur in communi, simile erit judicium tenentium singulorum, sive pro, sive contra : nisi sit aliquis qui partem suam amittat per negligentiam & defaltam, & quo casu versus participes regressum non habebit. Et unde si unus ex pluribus participibus vel pluribus tenéntibus in communi primo die comparuerit, vel pro diviso, sine participibus suis non respōdebit nisi velit, hoc tamen allegato q participes habeat.

8. Si plures sunt petentes.

Si autē plures sint ibi petētes, sive tenēs sit unus vel plures, observabitur in essonio secundū q observandū erit in pluribus tenentibus, scilicet quòd omnes habeant unicum essonium simul & uno die vel vicissim & successivè, quia in hoc nō licebit reo quod actori non liceat, q quidem non contingit nisi ex magna causa, cùm petens potius desiderare debeat instantiam litis quàm dilationem. Et si forte ex pluribus unus se essoniaverit, ex hoc omnibus aliis proveniet impedimentum & dilatio. Si autem unus ex pluribus defaltam fecerit, expectato quarto die, recedet tenens de brevi quietus ac si omnes defaltam fecissent, & sic erit unius negligentia omnibus aliis damnosa, quia aut omnes sequantur aut nullus. Idem verò dicendum erit de viro & uxore petentibus, quòd absentia viri erit damnosa uxori & e contrariò, sive autem plures sunt qui teneant sive qui petant, si quidam ex illis præsentes fuerint & quidam se essoniaverint & diem habuerint, illi qui p̃sentes erunt semper habebunt eundem diem,

heritance be claimed from one or from several, a common inheritance from coheirs but divided, if however it be claimed by one right or by several in common, the judgment of the individual tenants will be alike, whether for or against, unless there should be some one who loses his part through negligence and default, and in which case he shall have no recourse against his parceners. And hence if one out of several parceners or out of several tenants in common has appeared on the first day, or for his divided share, he shall not answer without his parceners unless he wishes, provided however it has been alleged that he has parceners.

8. If there be several claimants.

But if there be several persons there claiming, whether the tenant be one or more, there shall be observed in the essoin the same as ought to be observed in the case of several tenants, to wit, that all shall have a single essoin together and on one day, or in turns and successively, because in this there shall not be allowed to the defendant what is not allowed to the plaintiff, which indeed does not happen except from a great cause, when the claimant ought rather to desire the urgency of the suit than the delay of it. And if by chance one out of several persons shall have essoined himself, there will result to all the others therefrom an impediment and a delay. But if one out of several has made default, after the fourth day has been awaited, let the tenant go away quit of the writ as if all had made default, and thus the negligence of one will be damaging to all the others, because either all would follow or none. But the same thing will have to be said concerning a man and his wife who are plaintiffs, that the absence of the man will be damaging to the wife and the converse, whether there be several persons who hold, or who claim, if some of them have been present and some have essoined themselves and had a day, those who shall be present shall always have the same day, lest the continuity of the trial should be divided, and let there be always added in the essoin for caution's sake, who has essoined himself to

ne continentia loquelæ dividatur: & semper addatur in essonio ad cautelam quis se essoniaverit ad unum diem vel ad alium, ut scire possunt in fine utrum omnia essonia sua habuerint vel non. Et hæc vera sint, nisi consuetudo aliqua se habeat in contrarium, cùm consuetudo vicem legis obtineat, longævi enim temporis usus & consuetudinis non est vilis autoritas.

9. Si tenens fecerit attornatum.

Esto quòd tenens in propria persona sua sequi non possit, vel licet possit vel pro dubio eventu facit attornatum ad cautelam, quo casu in persona attornati jacet essonium & non in persona domini, sive petens qui attornatum fecerit sive tenens: quia attornatus fere in omnibus personam domini representat. Fere dico, propter essonium de malo lecti, ut inferius dicetur. Et quamvis quis attornatum fecerit, in psona ppria sequi poterit cùm voluerit vel possit. Item q hoc volũtati ejus tribuatur, sed semper durat attornatus quousque domin[2] eum amoverit, et quamdiu duraverit attornatus, nũquam locum habebit essonium in persona dñi, nisi cùm ambo se essoniaverint ad similitudinem duorum attornatorum vel plurium, quia si dominus venire non possit per se, possit venire per attornatum suum, sed non e contrariò, quia non est in duobus attornandum. Sed quid si dominus cùm fecerit attornatum & illum non amoverit ad aliq̃m diem sine attornato egerit vel respondit,[1] & diem ceperit in persona sua, quæro quis ad alium diem debeat se essoniare, dominus vel attornatus? Videtur q attornatus non, quia p̃sens non fuit in judicio nec diem receperit; dominus non, quia fecit attornatum & illum non amovit. Tutius est q ambo se essoniaverint, licet sufficiat quòd attornatus se essoniat quantum ad ex-

f. 342 b.

Britton, vi. ch. x. § 4.

[1] "responderit," MS. Rawl. C. 160.

one day or to another, that they may know in the end whether they have had all their essoins or not. And these things are true, unless there be some custom to the contrary, since custom plays the part of law, for the authority of an usage and custom of ancient time is not slight.

9. If the tenant has constituted an attorney.

Let it be, that the tenant cannot sue in his own person, or although he may be able, yet for a doubtful event he constitutes an attorney for caution's sake, in which case an essoin lies in the person of the attorney, and not in the person of the principal, whether it be the claimant or the tenant who has constituted an attorney, because an attorney represents the person of the principal almost in all matters. I say almost, on account of an essoin for bed-sickness, as will be explained below. f. 342 b. And although a person has constituted an attorney, he may sue in his own person, when he wishes, or is able. Likewise that this is allowable to his wish, but the attorney always continues, until the principal has removed him, and as long as the attorney continues, the essoin will never have place in the person of the principal, except when both have essoined themselves after the likeness of two or more attorneys, for if the principal cannot come in person, he may come by his attorney, but not contrariwise, for an attorney cannot be constituted in the two cases. But what if the principal, when he has constituted an attorney, and has not removed him, should on a certain day have acted without his attorney and should have answered, and have taken a day in his own person, I ask who ought to essoin himself on the other day, the principal or the attorney? It seems that the attorney should not, because he was not present at the judgment, nor did he take the day; the principal should not, because he has constituted an attorney, and has not removed him. It is safer that both should essoin themselves, although it would be sufficient that the attorney should essoin himself as regards making an excuse, since the principal has not

cusationem, cùm dominus eum non amoverit. Si autem dominus p se, non valebit quamdiu habuerit attornatum. Et q dicitur de attornato tenentis, dici debet de attornato petentis. Item esto q petens vel tenens plures fecerit attornatos, duos scilicet vel plures, unus ex pluribus (si p̃sens fuerit in judicio) agere poterit pro domino suo vel defendere sine aliis. Excusare autem absentiam suam non valeat sine aliis, quin procedatur ad defaltam ac si omnes defaltam fecissent. Et est ratio, quia si per unum attornatum non possit dominus litis comparere, per alium poterit: et sic oportet quòd omnes excusentur vel nullus. Constituti enim sunt attornati sub disjunctione, ita quòd si unus non venerit vel venire non possit, quòd alius veniat, nisi uterquè se legitimè excusaverit. Et si unus attornatus se essoniaret et alius non, si petens diem reciperet versus essoniatorem attornati & recederet, posset alius attornatus cōparere & liti se offerre, & ponere petentem vel tenentem in defaltā, q esset iniquum. De hac materia inveniri poterit de termino S. Michaelis anno regni regis Henrici decimosexto incipiente decimoseptimo de I. Bathoñ episcopo & priore Bathoñ. Ad idem facit de termino Hilarii anno ejusdem decimosexto de Johanne de Karum. Item esto q quis duos fecerit attornatos versus unum querentē vel tenentem vel plures, et uterque se essoniaverit, et tenens forte vel querens defaltam fecerit: quæritur an unus essoniator attornati vel ambo expectare debeant quartum diem: Videtur q oportet quòd ambo expectent, quia non videtur quòd sufficiat quòd unus expectaverit non magis quàm si unus excusaret. Videtur etiam q sufficit si unus expectet, quia quoad essonium et

Britton, *ib.*

removed him. But if the principal has done so personally, it shall not avail, as long as he has an attorney. And what is said of the attorney of the tenant, ought to be said of the attorney of the claimant. Likewise let it be that the claimant or the tenant has appointed several attorneys, two, for instance, or more, one out of several (if he has been present at the judgment) may act for his principal or defend him without the others. But he may not avail to excuse his absence without the others, because proceedings will be had for a default as if all had made default. And the reason is, because if the principal in the suit cannot appear by one attorney, he will be able to appear by another, and so it is incumbent that all should be excused or none. For attorneys are appointed disjunctively, so that if one has not come or cannot come, the other may come, unless both have excused themselves lawfully. And if one has essoined himself and the other not, if the claimant should obtain a day against the essoiner of the attorney and should go away, the other attorney might appear and offer to contest the suit, and put the claimant or the defendant into default, which would be inequitable. On this subject a case may be found in St. Michael's term in the sixteenth and seventeenth years of the reign of king Henry, concerning John bishop of Bath and the prior of Bath. A case also bears on the same subject in Hilary term in the sixteenth year of the same king, concerning John de Karum. Likewise let it be, that a person has constituted two attorneys against one claimant or tenant or several, and both have essoined themselves, and the tenant by chance or the claimant has made default, it is asked whether one essoiner of an attorney or both ought to await the fourth day. It seems that both ought to await it, because it does not seem that it would suffice for one only to await it any more than for one only to excuse himself. It seems also that it is sufficient if one should await the fourth day, for as far as regards an

excusationem utitur vice essoniatoris sive excusatoris, & quoad expectandum quartum diem utitur vice quasi actoris. Et ideo videtur quòd sufficiat unus: sed re vera quòd cùm infra quartum diem posset venire tenens nec prius reddi debeat essoniū quàm ante quartū diem, ideo oportet q uterq; expectet, quia non sufficit unus, quia si unus tantum se essoniaverit, non valet nisi unus essoniator diem suum expectaverit. Itē esto q cùm attornatus factus fuerit, ante diem datum in curia moriatur, & dominus principalis ad diē datū se essoniaverit nulla facta mentione de morte attornati,
f. 343. & justic. ignorantes de morte attornati judicaverint essonium nullū, quia talis fecit attornatum, & sic ꝓcesserit[1] ad defaltā, si dominus postea ad diem suum venerit excusando absentiam alterius diei & allegādo causas absentiæ de morte attornati, non excusabitur quod quidem esse posset si simul cum essonio suo faciet essoniari attornatum de morte, unde videri poterit q non aliter jaceret essonium in persona domini, cùm attornatū fecerit, nisi tunc demū cùm attornatū amoverit, vel cōstiterit q mortuus sit. Item esto quòd cùm quis fecerit attornatum, ad primum diem sum̄onitionis se essoniaverit, & attornatus secundo die vel tertio, essonium domini nullum erit, quia fecit attornatum, & de defalta attornati ꝓcedendum erit ad diem datum ꝑ essoniatorem, si petens se tenuerit ad defaltam, quia essonium dñi non defendit primum diem cùm sit nullum &c.

[1] "processerint," MS. Rawl. C. 160.

essoin and an excuse he fills the part of an essoiner or excuser, and as far as regards awaiting the fourth day he fills the part as it were of a plaintiff, and therefore it seems that one would suffice, but in truth since the tenant might come before the fourth day, and the essoin ought not to be rendered before the fourth day; therefore it is incumbent that both should await the fourth day, because one does not suffice, because if one only has essoined himself, it does not avail, unless the one essoiner has awaited his day. Likewise let it be that, when an attorney has been constituted, he should die before the day assigned in court, and the party principal on the day assigned has essoined himself without any mention having been made of the death of his attorney, and the justiciaries being ignorant of the death of the f. 343. attorney, have judged the essoin to be null, because the said party has appointed an attorney, and so have proceeded to a default, if the principal shall afterwards come upon his own day, in excusing his absence on the other day, and in alleging the causes of the absence from the death of his attorney, he shall not be excused, which might indeed be, if together with his own essoin he should cause his attorney to be essoined for death, whence it may be seen that an essoin in the person of the principal would not otherwise lie, when he has constituted an attorney, except at such time when he has removed the attorney, or it has been established that he is dead. Likewise let it be that, when a person has constituted an attorney, on the first day of the summons he has essoined himself, and the attorney on the second or third day, the essoin of the principal will be null, because he has constituted an attorney, and upon the default of the attorney proceedings will be had on the day assigned through the essoiner, if the claimant has kept himself to the default, for the essoin of the principal does not defend the first day, since it is null, &c.

10. Si attornatus obierit, dum dominus principalis litis fuerit in peregrinatione.

Quidam sum̄onitione p̃ventus cùm vellet peregre ꝓficisci versus Terram Sanctā in passagio generali, duos fecerit[1] attornatos vel plures, & dum ita esset in peregrinatione moriuntur attornati, ad diem offert se petens liti, nec tenens venit nec attornatum habet, quæritur quid juris cùm nihil sit quod possit tenenti imputari? Consilium curiæ erit, q̄ attornati essoniarentur de morte, & sic remanebit loquela sine die usque ad reditū domini principalis. Casus de Petro de Roches quondam Wintoñ episcopo, qui profectus fuit in Terram Sanctam in generali passagio. Et quod dictum est de tali peregrinatione, observari debet in aliis peregrinationibus, sicut apud Sanctum Jacobum vel alibi. Item esto q̄ quis se vel attornatum suum falsò essoniaverit de morte cùm vivus sit, si postea de eo constiterit quòd sit vivus, resum̄oneatur loquela in eodem statu in quo fuit die essonii interpositi per hæc verba, ita q̄ loquela illa tunc sit ibi in eodem statu quo fuit quando remansit sine die, eo quòd p̃dictus talis se essoniaverit falsò de morte, qui adhuc vivit ut dicitur. Et in quo casu, nisi sanare possit defaltam, amittet p̄ judicium: ut de termino S. Michaelis anno regni regis Henrici decimoquinto incipiente decimosexto in com̃ Cant̃ de quodam Osberto.

11. Si tenens plures vocaverit warrantos vel unum.

Item, esto q̄ quis vocet ad warrantum unum vel plures warrantos, post warranti vocationē habebit quilibet unicū essonium antequā cōparuerint, tam vocans quàm warrantus. Si autē plures warranti vocati fuerint ab uno, quilibet eorū unicum habebit essonium eodem modo, primo die simul vel vicissim, secundum q̄ superius dicitur, de pluribus tenentibus, scilicet quilibet post alium donec habuerint omnia essonia sua, scilicet quilibet unū. Et si plures sint tenentes & plures warranti eodem modo, et ita q̄ si unus ex plu-

[1] "fecit," MS. Rawl. C. 160.

10. If an attorney has died whilst his principal in the suit has been on a pilgrimage.

A certain person overtaken by a summons, when he was desirous to go abroad towards the Holy Land on a general passage, appointed two or more attorneys, and whilst he was so on his pilgrimage, the attorneys died, on the day assigned the claimant presents himself for the suit, and the tenant neither comes himself nor sends an attorney, it is asked, what is the law, since there is no fault to be imputed to the tenant? The resolution of the court will be that the attorneys are essoined on account of their death, and so the trial will be stayed until the return of the principal party in the suit. The case of Peter de Roches, formerly bishop of Winchester, who set out for the Holy Land on a general passage. And what has been said concerning such a pilgrimage, ought to be observed in other pilgrimages, as to St. James and elsewhere. Likewise let it be, that a person has falsely essoined himself or his attorney on account of death when he is alive, if it be afterwards established that he is alive, let the trial be resummoned in the same state in which it was when it was stayed without a day, on the ground that so-and-so aforesaid has falsely essoined himself on account of death, who is still alive, as it is said. And in which case unless he can cure his default, he shall lose by the judgment, as in St. Michael's term in the fifteenth and sixteenth years of the reign of king Henry, in the county of Kent, concerning a certain Osbert.

11. If a tenant has called several warrantors, or a single one.

Likewise let it be that some one calls to warrant one or more warrantors, after the calling of a warrantor each shall have a single essoin before they have appeared, as well the caller as the warrantor. But if several warrantors have been called by one, each of them shall have a single essoin in the same manner on the first day together or in turns, according to what is said above, concerning several tenants, to wit, each after the other until they have had all their essoins, to wit, each of them one essoin. And if there be several tenants and several warrantors in the same manner, and so that if one out

ribus tenentibus vel unus ex pluribus warrantis se essoniaverit primo die & omnes alii p̃sentes sint, habebunt eundem diem quem habet essoniator & ita de die in diem poterit se unus essoniare & postea alius, donec quilibet unicum habuerit essonium. Et eodem modo cùm omnes semel & simul in judicio cõparuerint & alium diem simul receperint, poterunt reincipere essonia sua sicut primo die. Si autẽ quidam se essoniaverint & quidã p̃sentes fuerint & quidam fecerint defaltam, de essoniatis & præsentibus fiat ut supra-
f. 343 b. dictum est. De absentibus verò fiat ita, scilicet q̃ petens vel attornatus suus vel essoniator suus si fuerit essoniatus, expectet quartum diem versus eos, si vocati infra quartũ diem nõ venerint, & in quarto die si non venerint, p̧cedatur ad defaltã secundum q̃ inferius dicetur de defaltis. Item cûm unus essoniatus fuerit versus plures, essoniator suus omnes dies recipiet versus omnes. Si autem plures versus unum, quilibet recipiet diẽ suũ, nec poterit unus alterius diem recipere, non magis quã duos participes essoniare. Itẽ dicitur generaliter, q̃ si quis se essoniaverit versus unum, essoniat se versus omnes, & tunc refert utrum plures sint petentes & unus tenens unicam rem. Si autẽ plures petentes in cõmuni, sufficit si dicat essoniator tenentes[1] q̃ essoniat dominũ suum versus talẽ & omnes alios nominatos in brevi sine expressione nominum aliorum. Si autem sic dicat, essonio dominum meum versus talem de tali placito sine mentione aliqua de aliis in brevi nominatis, videtur (& verum est) q̃ hoc sufficere debeat, quia p̧ hoc q̃ dominus essoniatur, nihil aliud

[1] " tenentis," MS. Rawl. C. 160.

of several tenants or one out of several warrantors has essoined himself on the first day, and all the others are present, they shall have the same day which the essoiner has, and so from day to day one may essoin himself and afterwards another, until each has had a single essoin. And in the same manner when all have appeared once and together in the court, and have together received another day, they will be able to recommence their essoins as on the first day. But if some have essoined themselves and some have been present, and some have made default, let it be done with those who have been essoined and with those who are present as above said. But concerning the absent, let it be done thus: f. 343 b. to wit, that the claimant or his attorney, or his essoiner if he has been essoined, should await the fourth day in regard to them, if having been called they have not come within the fourth day, and on the fourth day if they have not come, let proceedings be had for a default according to what will be said below concerning defaults. Likewise when one has been essoined in reference to several, his essoiner shall receive all the days with regard to all. But if several have been essoined in reference to one, each shall receive his own day, nor shall one be able to receive the day of another, no more than to essoin two parceners. Likewise it is said generally, that if any one has essoined himself with reference to one person, he essoins himself with reference to all, and then it is of importance whether there are several persons claiming and only one holding a single estate. But if there are several persons claiming in common, it is sufficient if the essoiner of the tenant says, that he essoins his principal with reference to so-and-so and all the others named in the writ without expressing the other names. But if he thus says, I essoin my principal with reference to so-and-so in respect of such a plea without mention of any others named in the writ, it seems (and it is true), that this ought to suffice, because by the fact that the principal party is essoined, nothing else is pretended,

p̃tenditur, nisi q̃ dominus suus per infortunium vel per morbum aliquem supervenientem impedimentum habeat, quòd ad diem sibi datum venire non possit, & ita cùm in curia semel excusetur absentia ejus per essoniatorem suum versus unum & probetur excusatio sua, sufficit versus omnes, quia si alii procedere vellent ad defaltam cōtra essoniatum, hoc facere non possent sine participe qui exprimitur, & ideo nulla defalta. Si autem è cōtrariò unus vel plures petentes contra plures tenentes, tunc refert utrum tenentes sint in communi ut participes, vel tenentes diversa tenementa per diversa jura. Si autem diversa teneant tenementa & per diversa jura, tunc oportet quòd petens (si unus sit) essoniat se versus omnes cum expressione personarum, quia sunt ibi diversa jura & diversa placita, licet plures tenentes in uno brevi cōprehendantur. Et si plures sint petentes in cōmuni & unus tenens sive plures, oportet quòd omnes petentes se excusent aut sequantur & veniant, sed defalta unius non erit omnibus aliis damnosa, nisi tantum illi qui defaltam fecit de parte sua. Si autem tenētes teneant in cōmuni vel pro indiviso,[1] dum tamen ut participes, si petens unus vel plures se essoniaverint, dum tamen omnes, sufficit si essoniati sint cōtra unum & alios in brevi nominatos, vel tātum cōtra unum sine mentione de aliis, ratione supradicta, quia cùm petentes excusati fuerint versus unum tenentem ex pluribus in cōmuni, alii sine eo p̃cedere non poterunt ad defaltam. Item si cui acciderit aliqua infirmitas in itinere veniendi & q̃ impotens sit veniendi, eodem modo impotens esse poterit mittendi plures personas ad curiam ad excusandam suam absentiam, & ideo sufficit si uni-

[1] "pro diviso," MS. Rawl. C. 160.

except that his principal through misfortune or through some supervening illness meets with an impediment, so that he cannot come on the day assigned to him, and so when in the court his absence is once excused by his essoiner with reference to one person, and his excuse is approved, it suffices with reference to all, because if the others wished to proceed to a default against the party essoined, this they could not do without their co-parcener who has been expressly mentioned, and therefore there is no default. But if on the contrary there be one or several claimants against several tenants, then it is of importance whether they are tenants in common as parceners, or persons holding divers tenements on different grounds of right. But if they hold divers tenements and on different grounds of right, then it is incumbent that the claimant, if he be single, should essoin himself in reference to them all with an expression of their persons, because there are there different rights and different pleas, although several tenants are comprehended in one writ. And if there are several claimants in common and one tenant or more, it is incumbent that all the claimants should excuse themselves or should sue and come, but the default of one shall not be hurtful to them all, except only to him who has made default on his own part. But if the tenants hold in common or in entirety, provided they hold as parceners, if one claimant or more have essoined themselves, provided they are all, it suffices if they have been essoined against one and the others named in the writ, or only against one without mention of the others, for the reason abovementioned, because when the claimants have been excused with reference to one tenant out of several in common, the others cannot proceed without him to a default. Likewise if there has happened to any one any illness on the way in coming, and so that he be unable to come, in the same manner he may be unable to send several persons to the court to excuse his absence, and accordingly it suffices if he sends a single person

cam ꝑsonam mittat cōtra plures qui sunt quasi unica psona, ꝑpter unicū jus ꝙ habent. Item essonium nō fit parti sed curiæ (ut videtur), quia in absentia adversarii poterit quis se essoniare sicut in ꝑsentia. Et eodem modo in absentia adversarii poterit fieri warrantizatio essonii & sacramentū, & unde videtur ꝙ sufficit si justic. cōstiterit de impotētia, etiā sine ꝑte altera. Et ideo si impotens sit veniendi vel mittendi versus unum, impotens esse poterit mittendi versus
f. 344. plures, & non refert nisi quòd justiciariis cōstiterit de impotentia. Sed cōtra si plures sint petentes, oportet ꝙ tenens, unus vel plures, se essoniet versus quemlibet nominatim ita ꝙ distinguetur, quid, quis, cōtra quem & de quo placito, secundum ꝙ videri poterit in attornato faciendo, quis attornaverit, & quem, & versus quem, & de quo placito, quæ omnia si non exprimantur non valebit attornatio. Eodem modo (ut videtur) observari deberet de essonio, quia potest quis tenens esse essoniatus versus unum ex pluribus & in defalta versus alium, sed observandum erit ut supra, secundum ꝙ ibi fuerit unum placitum vel plura.

12. Quis post duelli vadiationem se possit. es soniare.

Item quis? Et sciendum ꝙ essoniari poterit tam campio quàm dominus principalis post duelli vadiationem simul & uno & eodem die vel vicissim: ut de termino S. Michaelis anno regni regis Henrici nono incipiente decimo, in comitatu Cant', de quodam recordo de abbate de Haynshā.

against several who are as it were a single person on account of the single right, which they have. Likewise the essoin is not made to the party but to the court (as it seems), because a person may essoin himself in the absence of his adversary just as in his presence. And in the same manner in the absence of his adversary the warranting of the essoin and the oath may be made, and hence it seems that it is sufficient if it is made out to the satisfaction of the justiciaries concerning the inability of the party to come, even without the presence of the other party. And accordingly if he be unable to come or to send with reference to one, he may be unable to send with reference to many, and it is not of importance except that the justiciaries should be satisfied as to his inability. But on the contrary if the claimants are several in number, it is incumbent that the tenant, one or several, should essoin himself with reference to each by name, so that it can be distinguished as to what, who, against whom and concerning what plea, according to what may be seen in making an attorney, who has attorned, and whom, and in regard to whom, and concerning what plea, which matters, if they be not all expressed, the attornment will not be valid. In the same manner (as it seems) it should be observed concerning an essoin, because a tenant may be essoined in regard to one out of several, and may be in default in regard to another, but it should be observed as above, according as there may be one suit or several. f. 344.

12. Who may essoin himself after the wager of battle.

Likewise who? And it is to be known that as well the champion as the principal party after the wager of battle may be essoined together and on one and the same day, or in turns, as in St. Michael's term in the ninth and tenth years of the reign of king Henry in the county of Kent, in a certain record concerning the abbot of Haynsham.

13. Quando quis possit essoniari.

Item quando? Et sciendum q primo die litis, quia non sufficit quòd in crastino, scilicet secundo die, tertio, vel quarto, licet expectari debeat ille qui sum̄onitus est usq̄ ad quartum diem, ut infra veniat vel mittat nuntium ad excusandum suam absentiam, licet suus essoniator diem non recipiat si forte essonium locum non habeat, secundū q inferius dicetur de defaltis. Si autē essonium competat sum̄onito & faciat se essoniari secundo die vel tertio, allocabitur essonium, & dabitur dies essoniato per essoniatorem suum, & ad diem illum allocabitur petēti defalta si se tenere voluerit ad defaltam, & quo casu, si tenens se excusare non possit ad diem illum, amittere poterit seysina m.

14. Ubi possit essoniari.

Et ubi? Et sciendum q in judicio corā suo judice & non alio, licet corā eo qui habeat jurisdictionem cum aliis justiciariis, cùm suus non habet jurisdictionem nec cohertionem. Si autē corā alio per errorem se fecerit essoniari, adhuc valebit essonium, de gratia tamen, q salvabitur defalta quousq̄ judicium reddatur de defalta, ulterius autem vix poterit excusari.

15. Quotiens possit essoniari.

Item quotiens? Et sciendum q ad quamlibet apparitionem in judicio, secundum quod sum̄onitus tenuerit per se vel in com̄uni, postquam diem in judicio recepit, post visum petitum, warrātum vocatum, et post diem datum sub spe pacis vel alio modo. Et generaliter in omni casu in principio litis, ad quamlibet sum̄onitionem ubi cōtroversia sive placitum fuerit inter partes, & ubi fuerit judicium, & qui judicet inter par-

Likewise when? And it is to be known that on the first day of the suit, because it is not sufficient that it should be on the morrow, to wit, on the second, third, or fourth day, although he who has been summoned ought to await until the fourth day, that within that time he may come or send a messenger to excuse his absence, although his essoiner may not receive a day, if by chance his essoin should have no place, according to what will be said below concerning defaults. But if the party summoned is entitled to an essoin, and he causes himself to be essoined on the second or third day, the essoin shall be allowed, and a day shall be granted to the party essoined through his essoiner, and on that day there shall be allowed to the claimant a default, if he wishes to keep himself to a default, and in which case if the tenant shall not be able to excuse himself, he may lose his seysine. 13. When a person may be essoined.

And where? And it is to be known that in the judgment-hall and before his own judge and not another judge, although before him who has jurisdiction with other justiciaries, when his own judge has not jurisdiction nor coercion. But if he has through error caused himself to be essoined before another judge, the essoin will still be valid, by grace however, that the default shall be saved until judgment be rendered concerning the default, but further he can hardly be excused. 14. Where he can be essoined.

Likewise how often? And it is to be known that at each appearance in the judgment-hall, according as having been summoned he has presented himself alone or in common, after he has received a day in judgment, after a view has been claimed and a warrantor called, and after a day has been granted under the hope of peace or in some other way. And generally in every case in the beginning of a suit, at each summons, when there has been a controversy or a plea between the parties, and where there has been a judgment, and a 15. How often he may be excused.

tes, & sive ab initio præcipiatur quòd vicecomes habeat corpus sine solennitate attachiamentorum, vel quòd venire faciat, vel distringat per terras & catalla, alioquin injuriosum esset vocato in jus juris beneficiū denegare. Si autem nullum sit ibi placitum nec judicium, sed sit aliquis qui mandet aliquod ut ballivum suum, aliud erit dicendum ut supra.

f. 344 b.

## Cap. IV.

1. De essoniis de malo lecti.

Item excusatur alicujus absentia p infirmitatē de reseantisa, de qua ꝑvenit essonium q̄ dicitur essonium de malo lecti, & q̄ semper sequitur immediate (nullo alio essonio interjecto) essoniū de malo veniendi. Item nec de servitio dñi regis nec de alio. Et tunc locū habet cùm quis infirmitate per malū veniendi ita fuerit impeditus & detentus q̄ venire non possit, & se excusaverit per illud essoniū, & ab itinere revertatur in domiciliū suum, & vertatur malum transiens in languorē, quo casu videndū erit utrum talis infirmitas sit malum trāsiens vel languor. Si autē malū transiens, post visum habebit essoniatus alium diem per spacium xv. dierū ad minus. Si autē languor, tunc dabitur ei unus annus & unus dies, & ita q̄ annus sit integer secundum q̄ fit ex momentis, horis, diebus, scilicet ex 365 diebus & sex horis, sive annus sit bissextilis sive alius, nec major erit annus bissextilis aliquo anno p̄cedente, die (ꝑpter diem excrescētem), nec hora, nec

person to judge between the parties, and whether there has been a precept from the commencement that the viscount present his body without the solemnity of attachments, or that he cause him to come, or distrain him by his lands or chattels, otherwise it would be a wrong to the party called into court to deny him the benefit of his right. But if there be no plea nor judgment there, but there is some one who sends some one as his bailiff, something else will have to be said as above.

## CHAPTER IV.

f. 344 b.

1. Of essoins of bed-sickness.

Likewise the absence of any one is excused on account of infirmity keeping him at home, concerning which there is forthcoming an essoin, which is called infirmity from bed-sickness, and which always follows immediately (without any other essoin being interposed) an essoin from sickness on the way. Likewise neither concerning the service of the king, nor concerning any other service. And it has then place, when a person has been so hindered and detained by infirmity from sickness on the way that he could not come and he has excused himself by an essoin for that cause, and he turns back from his journey to his own home, and a transient illness turns into a tedious disease, in which case it is to be seen whether the said infirmity is a transient illness or a tedious disease. But if it be a transient illness, the person essoined shall have after a view another day through a space of fifteen days at least. But if it be a tedious disease, then there shall be allowed him a year and a day, and so that it be an entire year according as the year is made up of moments, hours, days, to wit, of 365 days and six hours, whether it be Leap-year or another year, nor shall Leap-year be longer than any other preceding year by a day (on account of the excrescent day), nor by an hour, nor by a

f. 355. momento, secundum q̃ inferius dicetur plenius de anno et die, et talis infirmitas infra annum ꝑpriè dicitur languor, si autem ultra annū duraverit, talis infirmitas dici poterit morbus sonticus, scilicet morbus incurabilis. Itē essoniū de malo lecti non sequitur omne essoniū de malo veniendi, quia sunt quædā brevia in quibus non sequitur nisi tantū essoniū de malo veniēdi simpliciter et per se, & nunquam essonium de malo lecti, nisi aliquando per accidēs sicut per narrationem, ubi breve de ingressu vertitur per narrationē ad breve de recto. Et quo casu, in principio litis non statim sequitur essonium de malo lecti essonium de malo veniendi, nisi tunc demū cùm mutata fuerit natura brevis de ingressu in naturā brevis de recto, & eodē modo non statim sequitur essonium de malo lecti essonium de malo veniendi, nisi tūc demū cùm mutata fuerit natura brevis de communia pasturæ (facta specificatione de qualitate & quātitate) in breve de recto ꝑ narrationē, sicut in brevi de quo jure & hujusmodi. Itē sequitur essonium de malo lecti essoniū de malo veniendi, & desinit sequi in fine ꝑ narrationē, ut si quis primò agat ꝑ breve de recto, habebit utrūq̃ essoniū in principio, sed cùm brē de recto versum fuerit in brē de ingressu ꝑ narrationem, & tenens se posuerit in juratam, tunc desinit essoniū de malo lecti sequi essoniū de malo veniendi, cùm loquela per narrationē incipiat esse alterius naturæ. Et eodē modo in brevi de recto ubi hæreditas descēdit à cōmuni stipite usq̃ ad cōjunctas personas, scilicet duos fratres vel plures vel eorū hæredes in infinitū descēdentes. In principio litis sequitur unum essonium aliud, ut

moment according to what will be said below more fully concerning a year and a day, and such an infirmity within a year is properly called a tedious disease, but if it should last more than a year, such an infirmity may be called *morbus sonticus*, to wit, an incurable disease. Likewise an essoin on account of bed-sickness does not follow every essoin on account of sickness by the way, because there are some writs, in which there does not follow any essoin except only an essoin of sickness by the way simply and by itself, and never an essoin of bed-sickness, unless sometimes by accident in counting, when a writ of entry is by counting turned into a writ of right. And in which case, an essoin of bed-sickness does not immediately follow at the commencement of the suit an essoin of sickness by the way, except then indeed when the nature of a writ of entry is changed into the nature of a writ of right, and in the same manner an essoin of bed-sickness does not immediately follow an essoin of sickness by the way, except then indeed when the nature of a writ on common of pasture (upon a specification having been made of the quality and the quantity) has been changed into a writ of right by the counting, as in a writ of "quo jure" and such like. Likewise an essoin of bed-sickness follows an essoin of sickness by the way, and ceases to follow it at the end through the counting, as if a person first proceeds by a writ of right, he will have each essoin at the commencement, but when the writ of right has been turned into a writ of entry by the counting, and the tenant has put himself upon a jury, then an essoin of bed-sickness ceases to follow an essoin of sickness by the way, since the argument on account of the counting begins to be of another nature. And in the same manner in a writ of right when the inheritance descends from a common stock, down to privies in blood, to wit, two brothers or more or their heirs descending in an endless degree. At the commencement of the suit the

p̃dictū est, sed in fine sequi desinit, cùm judicatū fuerit inde duellum, nec magna assisa jacuerit inter tales psonas à cōmuni stipite venientes. Itē est & aliud bŕe de recto ubi unū essoniū aliud non sequitur, nec in principio brevis, nec in medio, nec in fine, nec aliquo tēpore, quale est breve de recto de dote, quia nunquam erit ibi duellum nec magna assisa. Et generaliter verum est q̄ ubicunque sequi possit magna assisa & duellū, & quādiu & dum sequi possit, locum habebit essonium de malo lecti, & ubicunque non sequitur duellū nec magna assisa, vel si sequi inceperint & sequi desierint, nunquā locū habebit essonium de malo
f. 345. lecti. Item videndum, quis se essoniare possit de malo
Britton, vi. ch. ix. § 1. lecti post essoniū de malo veniendi? et sciendum q̄ tam masculus quàm fœmina, plures vel unus. Item warrantus cùm adhuc non warrantizaverit, dum tamen languor non præcesserit, ut inferius dicetur. Item tam minor quàm major, dum tamen minor infra ætatem teneatur de feoffamento ei facto ad breve de recto ei respondere, quia in hoc casu omnia habebit remedia quæ haberet aliquis major in causa proprietatis, licet per se respondere non possit vel jurare, potest tamen p̄ custodem & curatorem, qui (si opus fuerit) jurare poterunt ad warrantizādum essonium in animam ipsius minoris, si implacitatus fuerit de aliquo & essoniatus de malo veniendi, de quo antecessor suus non obiit seysitus ut de feodo, & ubi præsentia sua fuit necessaria q̄ ad jus respondeat. In quo casu, semper fiat mentio super essonio de minori ætate, ita scilicet, & sciendū q̄ talis est infra ætatem. Si autem petat minor in causa possessionis seysinam antecessoris sui per

one essoin follows the other as aforesaid, but at the end it ceases to follow, when a duel has been adjudged thereon, and a great assise will not lie between such persons coming from a common stock. Likewise there is also another writ of right, where the one essoin does not follow the other, neither at the commencement of the writ, nor in the middle, nor in the end, nor at any time, such as is a writ of dower, because there will never be there a duel nor a great assise. And generally it is true that, wherever a great assise and a duel can follow, there an essoin of bed-sickness will have place, and wherever neither a duel nor a great assise follows, or if they have begun to follow they have also ceased to follow, an essoin of bed-sickness will never have place. Likewise we must see, who may essoin himself for bed- f. 345.
sickness after an essoin for sickness on the way ? and it is to be known that a male person as well as a female may do so, several or one. Likewise a warrantor, when he has not as yet warranted, provided however a tedious disease has not preceded, as will be explained below. Likewise as well a minor as a major, provided however that the minor under age is bound to answer to a writ of right concerning a feoffment made to him, because in this case he will have all the remedies, which any major would have in a cause of property, although he cannot answer nor swear by himself, he can nevertheless do so by a guardian or a curator, who (if it be necessary) can swear to warrant the essoin upon the soul of the minor, if he be impleaded concerning anything, and be essoined for sickness on the way, whereof his ancestor did not die seysed as of fee, and where his presence was necessary, that he should answer to the right. In which case let mention always be made upon the essoin concerning the minority, to wit, in this manner, "and it is to be known that so-and-so is under "age." But if a minor in a cause of succession claims the seysine of his ancestor through an assise, the minor

assisam, nullum habebit essonium minor petens nec tenens contra eum, cùm tantum operetur ejus absentia quantū p̃sentia, cùm nihil dicere possit, quare assisa remaneat quin statim capiatur.

2. Quando fieri debet essonium de malo lecti et qualiter.

Item quando fieri debeat essonium de malo lecti & qualiter? & sciendum q̄ tertio die inclusivo, scilicet ante diem datum per essoniatorem in essonio de malo veniendi, & per duos qui non dicuntur essoniatores sed nuntii, eo q̄ mittuntur vel nuntiant ad excusationem, & non essoniant, quia diem non recipiunt nec affidant de habendo warranto suo ad aliquam diē ad p̄bandam excusationem, ut supra de essonio de malo veniendi, & sic mitti possit quis ad essoniandum & p̄bandum, vel ad essoniandū & non probādum propter dubium eventum essonii. Item est nuntius, qui aliquando mittitur vel licet non mittatur verba faciat[1] p̄ absente, quasi pro amico, & nūtiat tale impedimentum intervenisse q̄ sum̄onitus venire non possit, et talis p̄priè dicitur nuntius et nō essoniator, sicut alii p̃dicti, et audiri debet sicut nuntians usq̄ ad quartū diē et quandoq̄ ulterius usque ad judiciū de defalta.

3. Quotiens fieri debet essonium de malo lecti, quando et qualiter.

Itē quotiens, et sciendum q̄ in omni tempore post essonium de malo veniendi, donec adjudicatus fuerit ei languor & habuerit languorē, scilicet annū & diem, quia post languorē adjudicatū, aliquādo ex causa de volūtate petētis poterit dari essoniato licētia surgēdi, ut statim respōdeat, q̄ quidē sine voluntate petentis nulla ratione est cōcedendū ante annū & diē, & cûm ita respōderit & diē habuerit, poterit post essoniū de

[1] " facit," MS. Rawl. C. 160.

plaintiff shall have no essoin nor the tenant against him, since his absence operates in the same way as his presence, since he can say nothing, wherefore the assise should be stayed from being held at once.

2. When an essoin of bed-sickness ought to be made, and in what manner.

Likewise when ought an essoin of bed-sickness to be made, and in what manner? and it is to be known that it should be made on the third day inclusive, that is before the day given through the essoiner in an essoin of sickness by the way, and through two persons who are not called essoiners but messengers on the ground that they are sent or bring a message to make excuse, and they do not essoin, because they do not receive a day nor do they pledge themselves to produce their warrantor on any day to prove the excuse, as above concerning an essoin of sickness on the way, and so a person may be sent to essoin and to prove, or to essoin and not to prove, on account of the doubtful event of the essoin. Likewise there is a messenger, who is sometimes sent, or, although he be not sent, says words on behalf of the absent person, as if on behalf of a friend, and announces that such an impediment has intervened, so that the person summoned cannot come, and such a person is properly called a messenger and not an essoiner, as the others aforesaid, and he ought to be heard as a messenger up to the fourth day, and sometimes further up to the judgment concerning the default.

3. How often an essoin of bed-sickness ought to be made, when and in what manner.

Likewise how often? and it is to be known, that at any time after an essoin of sickness by the way, until there has been adjudged to him a tedious disease, and he has had his tedious disease, to wit, a year and a day, because after a tedious disease has been adjudged, sometimes upon cause shown with the consent of the plaintiff licence of rising may be granted to the person essoined, that he may forthwith answer, which indeed without the consent of the plaintiff is not on any account to be allowed before a year and a day, and when he has so answered

malo veniendi essoniare se de malo lecti, quia nō sufficit q̄ languor sit adjudicatus, nisi sit adimpletus. Itē si plures fuerint p̄ticipes qui tenuerint in cōmuni, possunt omnes se essoniare si voluerint simul et uno die. Et si in essonio de malo lecti fuerit omnibus simul lāguor adjudicatus, erit languor omniū quasi unus lāguor. Si autē cū plures essoniati fuerint de malo lecti, cū visus fuerit post essoniū, poterit quibusdā adjudicari languor et quibusdā malum trāsiens, et omnes qui languidi sunt ad diē quo testificabitur languor, habebunt annū & diem apud Turrim Londō[1] et alii nō eundem diem, sed diem convenientem, cū sine aliis respondere non tenentur. Et cùm semel uni vel plu-
f. 345 b. ribus fuerit languor adjudicatus & in judicio testatus, nullus eorum de cætero habebit essonium de malo lecti, nisi (ut p̄dictum est) si detur licentia surgendi, sed semper essonium habebunt de malo lecti, donec unus vel plures, vel omnes simul habuerint languorem. Item poterit unus ex pluribus uno & eodem die se essoniare de malo lecti, & particeps suus unus vel plures de malo veniendi, & si illi qui de malo veniendi se essoniaverint, de malo lecti ad alium diem se essoniare non poterunt, donec constiterit de primo essonio utrum habuerit malum transiens vel languorē, quia si languorem habuerit & de hoc cōstiterit, & alius similiter se essoniaverit de malo lecti ad alium diem & haberet languorem, ita possunt esse in uno placito simul & semel duo languores, q̄ esse non debet. Igitur cùm unus ex pluribus essoniatus fuerit de malo

[1] "London" omitted, MS. Rawl. C. 160.

and has obtained a day, he may after an essoin of sickness by the way essoin himself for bed-sickness, for it is not sufficient that an essoin for a tedious disease should be adjudged, unless it should be completed. Likewise if there be several who hold in common, they may all essoin themselves, if they wish, together and on one day. And if in an essoin of bed-sickness there has been adjudged to all together an essoin for a tedious disease, the tedious disease of all shall be as it were one tedious disease. But when there are several, who have been essoined for bed-sickness, when there has been a view taken of them after the essoin, to some indeed an essoin for a tedious disease may be adjudged, and to some an essoin for a transient malady, and all who are languishing on the day on which evidence of a tedious malady shall be produced, shall have a year and a day at the Tower of London, and the others not the same day, but a convenient day, since they are not bound to answer without the others. And when once to one or several an essoin for a tedious malady has been adjudged and testified judicially, f. 345 b. none of them shall have an essoin of bed-sickness, unless, as aforesaid, if a licence to get up is granted, but they shall always have an essoin of bed-sickness, until one or more or all together have an essoin of a tedious disease. Likewise one out of several will be able to essoin himself on one and the same day for bed-sickness, and his parcener one or more for sickness by the way, and those who have essoined themselves of sickness by the way will not be able to essoin themselves for bed-sickness upon another day, unless it has been ascertained concerning the first essoin, whether he has a transient illness or a tedious disease, because if he shall have a tedious disease and this has been ascertained, and another in like manner has essoined himself upon another day for bed-sickness and should have a tedious disease, there might be in one plea together and at the same time two tedious diseases, which ought not to be. Therefore when one out of several has been essoined for bed-sickness, essoins for

lecti, cessabunt omninò essonia de malo lecti in personis aliorū, donec sciatur utrum talis habuerit languorem vel malum transiens ꝑpter inconveniens supradictum, & cùm unus languorem habuerit, de cætero cessabūt omnia essonia de malo lecti in personis aliorum. Sed esto ꝙ cùm unus ex pluribus essoniatus fuerit de malo lecti & alii cùm habuerint diem per essoniatores suos se faciant essoniari de facto ad diem illum de malo lecti, judicium essonii erit in suspenso usque ad quartum diem, in quo casu si quatuor milites venerint & testati fuerint visum & ꝙ defenderint ei languorem, tūc (ne absens sit omnino indefensus) propter necessitatem de consilio curiæ succurritur ei, ita quòd verꝛetur essonium de malo lecti in essonium de malo veniendi. Sed esto quòd ad diem datum per essonium capiatur inter partes dies amoris, cûm uterque comparuerit ad illum diem, sequatur essonium de malo veniendi, & si se essoniaverit de malo lecti, eodem modo poterit verti essonium de malo lecti in essonium de malo veniendi ut prius. Et sic fieri poterit in omni casu ubi jacuerit essonium de malo veniendi, sed si nullum, erit hoc defalta, sed nunquam vertitur essonium de malo veniendi in essoniū de malo lecti. Quandoq̃ vertitur essoniū de malo veniendi in essonium de malo lecti. Quādoq̃ vertitur essonium de malo lecti in essoniū de malo veniendi ex necessitate & de consilio curiæ, & ita ꝙ habebit duo essonia quodlibet post aliud sine apparitione, & sic cum unus ex pluribus languorē habuerit, extunc cessabunt omnia essonia de malo lecti in toto placito illo sive tenentes warrantū vocaverint sive non. Si autem dederint ei malum transiens, tunc primo tenebit essonium secundū

bed-sickness shall cease altogether in the persons of the others, until it be known whether so-and-so has a tedious disease or a transient illness, on account of the inconvenience aforesaid; and when one of them shall have a tedious disease, thereupon all essoins for bed-sickness shall cease in the persons of the others. But let it be that, when one out of several shall have been essoined for bed-sickness, and the others, when they shall have had a day through their essoiners, cause themselves to be essoined in fact upon that day for bed-sickness, the judgment upon the essoin shall be in suspense until the fourth day, in which case, if four knights have come and testified to their view and that they deny a tedious disease on his part, then (that an absent person shall not be altogether undefended) on account of the necessity upon the advice of the court he is so far succoured, that his essoin for bed sickness shall be converted into an essoin for sickness on the way. But let it be that upon the day given through the essoin a day of love be taken between the parties, when each has appeared on that day, let an essoin for sickness on the way follow, and if each has essoined himself for bed-sickness, in the same manner the essoin for bed-sickness may be converted into an essoin for sickness on the way, as before. And so it may be done in all cases, where an essoin of sickness by the way has lain, but if none, this will be a default, but an essoin of sickness by the way is never turned into an essoin for bed sickness, Sometimes an essoin for sickness by the way is turned into an essoin for bed-sickness. Sometimes an essoin for bed-sickness is turned into an essoin for sickness on the way from necessity and upon the advice of the court, and so that he shall have two essoins each after the other without an appearance, and so, when one out of several shall have had a tedious disease, thenceforth shall cease all essoins for bed-sickness in that entire suit, whether the tenants have vouched a warrantor or not. But if they have granted to him a tedious disease, then for the first time a second essoin for bed-sickness shall hold good in

de malo lecti in ꝑsona alterius essoniati. Si autē quatuor milites non venerint infra quartum diem nec primò essoniatus, tunc eodem modo & eadē necessitate (ut prædictum est) vertitur essoniū de malo lecti in essoniū de malo veniendi, donec sciatur utrum primò essoniatus de malo lecti habuerit languorē vel non, & ad omnes dies sequentes erit ut p̄dictū est, secundum q̄ testatum fuerit ꝑ quatuor milites. Si autē partitio facta fuerit inter plures cohæredes de communi hæreditate, & ita q̄ quilibet respōdere debeat de ꝑte sua in principio litis antequā omnes simul cōparuerint, quilibet ꝑ se habere poterit essoniū de malo lecti & quilibet languorem, & ita quòd plures esse possunt languores post divisionem hæreditatis: ut de termino
f. 346. S. M. añ regis H. ix. incipiente x. in com̃ Suff., de Salomone de S. Edmūdo & Oliva filia Andreæ. Sed cùm omnes cōparuerint in curia et ita q̄ nullus sine alio velit respondere, tunc aliud erit ut in primo casu, nisi quis habere poterit duo essonia de malo veniendi simul ꝑpter necessitatem, ita q̄ ex necessitate possit quis habere duo essonia de malo veniendi.

4. Si quis habere possit duo essonia de malo veniendi simul propter necessitatem.

Esto q̄ quis implacitatus fuerit de diversis placitis, & in uno eorundē fuerit ei languor adjudicatus, et in alio placito se semel essoniaverit de malo veniendi, & diem habuerit, & ad quē diem venire possit[1] nec mittere, cùm attornatū nō fecerit, ne sequatur essonium de malo lecti, si se iterum essoniaverit de malo veniendi, aut de necessitate allocabitur ei essonium de consilio curiæ, vel suspēdetur ꝑcessus illius loquelæ, quousq̄ essoniatus comparere possit post languorem, &

[1] "non possit," MS. Rawl. C. 160.

the person of the second person essoined. But if the four knights have not come within the fourth day nor the person essoined in the first place, then in the same manner and by the same necessity, as above said, the essoin of bed-sickness is turned into an essoin of sickness by the way, until it be known whether the person essoined in the first place for bed-sickness has a tedious disease or not, and on all the following days it will be as aforesaid, according to what shall have been testified by the four knights. But if a partition shall have been made between several coheirs of a common inheritance, and so that each ought to answer for his own part at the commencement of the suit before all have appeared together, each for himself may have an essoin for bed-sickness, and each for a tedious disease, and so that there may be several essoins for a tedious disease after the division of the inheritance, as in Michaelmas term in the ninth and tenth years of king Henry in the county of Suffolk, concerning Solomon of St. Edmund and Oliva the daughter of Andrew. But when all have appeared in the court and so that none is willing to answer without another, then it will be otherwise as in the first case, unless a person may have two essoins for sickness on the way at the same time on account of necessity, so that from necessity a person may have two essoins for sickness on the way. f. 346.

4. If a person may have two essoins for sickness on the way at the same time from necessity.

Let it be that a person has been impleaded in several suits, and in one of them an essoin for a tedious disease has been adjudged to him, and in the other suit, he has once essoined himself for sickness on the way, and has had a day, and on which day he neither could come nor send, since he had not appointed an attorney, lest an essoin should follow for bed-sickness, if he should a second time essoin himself for sickness on the way, either of necessity there will be allowed to him an essoin upon the advice of the court, or the process of the trial will be suspended, until the person essoined is able to appear after a tedious disease, and proceedings shall not be had

non ꝑcedetur ad defaltam: ut de termino P. anno regis H. xvi. in comitatu Norf. de Galfrido filio Baldwini. Item q̄ non proceditur ad defaltam in uno placito propter essonium de malo lecti in alio, inveniri poterit de termino S. M. anno regis H. xv. incipiente xvi. in comitatu Midd., de Gylberto de Hendon, & hoc maximè si placitum emerserit post languorem adjudicatū. Item erit, si languidus post languorem adjudicatum vocatus fuerit ad warrantum, secundum quod evenit de prædicto Galfrido. Item quod allocari debeat essonium in prædicto casu, quòd aliàs non esset licitum, ꝑbatur de termino S. M. anno regis H. vi. incipiente vii. in comitatu Norf., de Erimnarda de Pocotte & quodam Johanne, qui se essoniavit versus eam de malo veniendi de uno placito, & cui fuit languor adjudicatus in alio placito, & quamvis essonium de malo veniendi non jaceret, fuit tamen ei allocatū de consilio curiæ ꝑpter necessitatem, quia honestius fuit essonium allocare ex causa, quàm procedere ad defaltam, cùm essoniatus non esset in culpa.

5. Si vir et uxor se simul essoniaverint de malo lecti.

Si vir & uxor se simul essoniaverint primò de malo veniendi, poterunt se simul essoniare de malo lecti ad alium diem si voluerint, & simul habere languorem, sed non erunt ibi plures languores sed unus, ꝑpter juris unitatem. Item poterunt se vicissim essoniare si voluerint tam de malo veniendi quā de malo lecti, & secundum q̄ supradictum est, donec habuerint languorem ambo simul vel alter eorum per se. Sed cûm ambo primo die simul essoniati fuerint de malo veni-

to a default: as in Easter term in the sixteenth year of king Henry in the county of Norfolk, concerning Godfrey the son of Baldwin. Likewise that proceedings are not had to a default in one suit on account of an essoin of bed-sickness in another, may be found in Michaelmas term in the fifteenth and sixteenth years of king Henry in the county of Middlesex, concerning Gylbert of Hendon, and this chiefly if the suit has emerged after an essoin for a tedious disease has been adjudged. Likewise it will, if a sick man, after an essoin for a tedious disease has been adjudged, has been vouched to warrant, according to what happened in the case of the aforesaid Godfrey. Likewise that an essoin ought to be allowed in the aforesaid case, which otherwise would not be allowable, is proved in Michaelmas term in the sixth and seventh years of king Henry in the county of Norfolk, concerning Erimnard de Pocotte and a certain Johannes, who essoined himself against her for sickness in the way in one suit, and to whom an essoin for a tedious disease was adjudged in another suit, and although an essoin for sickness by the way would not lie, nevertheless it was allowed to him on the advice of the court on account of necessity, because it was more honest to allow an essoin for a cause than to proceed to a default, when the party essoined was not in fault.

5. If husband and wife have essoined themselves at the same time for bed-sickness.

If husband and wife have together essoined themselves in the first place for sickness on their way, they may together essoin themselves for bed-sickness to another day, if they are so minded, and may together have a tedious disease, but there shall not be there several tedious diseases, but only one, on account of their unity of right. Likewise they may essoin themselves in turns if they wish as well for sickness on the way as for bed-sickness, and according to what has been said above, until both together have had an essoin for a tedious disease, or one or other of them alone. But when both have been on the first day essoined together for sickness on the way, and on another day the man

endi, & ad alium diem compareat vir & uxor, & vir essoniatus fuerit de malo lecti, & ad diem datum, cùm essoniatus visus fuerit testatum fuerit per milites quòd sit malum transiens, & uxor eodem die se essoniaverit de malo lecti, quæritur an sit essonium allocandū immediatè post apparitionem, cùm semel in curia comparuerit post essoniū de malo veniendi, & non erit allocandum, quia essonium de malo lecti semper sequitur essonium de malo veniendi immediatè, & de apparitione tempore medio tollitur omninò essonium de malo lecti, & per aliud essonium immediatè, sicut de servitio domini regis si procedat essonium de malo lecti, vel si aliud intervenerit vel non, idem erit dicendum. Post essonium vero de malo lecti, nunquam
f. 346 b. jacebit essonium de malo veniendi de tempore præterito, & non nisi sum̄onita fuerit loquela, & posita coram justiciariis itinerantibus quasi ex nova sum̄onitione, vel nova resum̄onitione, post iter justic. cū quis ad ultimū diē essoniatus fuerit in bāco, & languor ei adjudicatus non fuerit, & licentiam habuerit surgendi, occasione itineris justic. Itē esto q vir essoniatus fuerit de malo lecti & milites forte ad diem datum non venerint, & uxor se essoniaverit de malo veniendi, & diē habuerit per essoniatorem suum, & milites attachiati fuerint, & eundem diem habuerint, ad quem si milites non venerint oportet q uxor compareat, et si defaltam fecerit, defalta sua erit utriq̄ dānosa, ita q uterque amittet p defaltā unius, quicunq̄ illorū defaltam fecerit, quia res sive tenementa uxoris non recipiūt divisionē, sicut inter cohæredes et pticipes. De hac materia inveniri poterit de termino S. H. anno

and his wife have appeared together, and the man has been essoined for bed-sickness, and on the day given to him, when the person essoined has been viewed, it has been testified by the knights that it is a transient illness, and the wife on the same day has essoined herself for bed-sickness, it is asked whether an essoin is to be allowed immediately after the appearance, when she has once appeared in court after an essoin for sickness by the way, and it will not be allowable, because an essoin for bed-sickness always follows an essoin for sickness by the way immediately, and by the appearance in the meantime an essoin for bed-sickness is altogether taken away, and by another essoin immediately, as concerning the service of the king, if an essoin for bed-sickness proceeds, or if another has intervened or not, f. 346 b. the same thing will have to be said. But after an essoin for bed-sickness an essoin for sickness on the way will never lie concerning time which is past, and not unless the trial has been summoned and placed before the justices itinerant as if upon a new summons or a new resummons, after the iter of the justiciaries, when a person on the last day has been essoined in the bench, and there has not been adjudged in his case an essoin for a tedious disease, and he has had liberty to leave his bed, on occasion of the iter of the justiciaries. Likewise let it be that a husband has been essoined for bed-sickness, and the knights by chance have not come upon the day given to him, and the wife has essoined herself for sickness on the way, and has had a day through her essoiner, and the knights have been attached, and have had the same day, upon which if the knights have not come, it is incumbent that the wife should appear, and if she has made default, her default will be damaging to both, so that both shall lose through the default of one, whichever of them has made default, because the estate or tenements of the wife do not admit of division, as between coheirs and parceners. On this subject a case will be found in Hilary term in the thirteenth year of

regis H. xiii. in coñ Devoñ de Thoma de Tyndland. Et oportet q̄ appareat ad omnes dies sine essonio, donec visus factus fuerit de viro suo, postquā semel habuerit essoniū de malo veniendi, quia plura habere non poterunt anteqm simul cōpareant vir & uxor, et idē dicatur de viro, cùm uxor essoniata fuerit de malo lecti. Si autē bis se essoniaverit, tunc observetur ut supradictū est. Itē cùm quis plures warrantos vocaverit sive sit tenens unus sive plures, si tale sit placitū & tale breve q̄ sequi debeant essonia de malo lecti, tunc videndū erit, utrū tenentes qui warrantū vocaverint languorē habuerint, quidam, vel omnes, vel non. Si autem languorē habuerint, warranti languorē non habebunt, tenentes vero essonium habebūt de malo lecti, donec warranti warrantizaverint, & warranti nullū, antequā warrantizaverint, cū autē warrantizaverint, tunc primò habebunt essonia de malo lecti, cū warrātizaverint, sicut ipsi principales tenētes donec semel habuerint languorem.

6. Ad quæ brevia pertinent duo essonia de malo veniendi et similiter de malo lecti.

Videndū inter cætera, ad quæ brevia p̄tineant īmediate duo essonia. In quo casu necesse erit q̄ in essoniis de malo lecti allocandis, primò inspiciantur brevia originalia, inter quæ inveniri poterunt duo brevia, à quibus generaliter duo p̄cedunt essonia, scilicet breve de recto de terra, sed non breve de recto de dote, quia ad br̃e de recto de dote, non jacet essoniū de malo lecti, ex quo non sequitur ex eo duellū, nec magna assisa. Item duo sequuntur essonia quodā breve de

king Henry in the county of Devon, concerning Thomas de Tyndland. And it is incumbent that she should appear every day without an essoin, until a view has been had concerning her husband, after he shall have once had an essoin for bed-sickness, because they will not be able to have more before the husband and the wife have appeared together, and the same may be said concerning the husband, when the wife has been essoined for bed-sickness. But if she has twice essoined herself, then let it be observed as aforesaid. Likewise when a person has vouched several warrantors, whether there be one tenant or several, if the suit be such and the writ such, that essoins for bed-sickness ought to follow, then it will have to be seen whether the tenants who have vouched a warrantor have had an essoin for a tedious disease, some or all, or not so. But if they have had an essoin for a tedious disease, the warrantors shall not have an essoin for a tedious disease, but the tenants shall have an essoin for bed-sickness, until the warrantors have warranted, and the warrantors shall have none, before they have warranted, but when they have warranted, then they shall have in the first place essoins for bed-sickness, if an essoin for a tedious disease has not preceded, and they may in turns essoin themselves for bed-sickness, when they have warranted, just as the said principal tenants, until they shall once have had an essoin for a tedious disease.

6. To what writs two essoins for sickness by the way and in like manner for bed-sickness appertain.

We must amongst other things see to what writs two essoins immediately appertain. In which case it will be necessary that in allowing essoins for bed-sickness, the original writs should first be inspected, amongst which will be found two writs, from which generally two essoins proceed, to wit, a writ of right concerning land, but not a writ of right concerning dower, because upon a writ of right concerning dower an essoin for bed-sickness does not lie, since from it neither the duel nor a great assise proceeds. Likewise two essoins fol-

recto q vocatur præcipe, sicut illud, ubi quis terram quam petit clamat tenere de dño rege in capite, quod immediate terminari debet in curia domini regis. Est etiam aliud breve quod loquitur de servitio & consuetudine. Item breve de advocatione ecclesiæ, quod similiter immediatè terminari debet in curia regis. Est etiam quoddam breve quod vocatur præcipe, à quo per accidens & ex discretione justiciarii duo procedunt essonia, in quo fit mentio de longinquo ingressu, verbi gratia.

7. Ubi vertitur breve de ingressu per narrationem et e contrario.

Præcipe A. quòd juste &c. reddat tali abbati tantam terram cum pertinentiis in tali loco, quam clamat esse jus ecclesiæ suæ, et in quam idem A. non habet ingressū nisi per B. quondam abbatem talem, qui sine assensu & voluntate capituli sui illam dimisit &c. Et in hujusmodi brevibus, priusquam fiat judicium de essonio de malo lecti si factū fuerit, sunt à justiciariis inquirenda in hoc casu hujusmodi. Inquirendum est à petente per quantum tempus adversarius suus terram illam tenuit, & quando abbas obiit per q̃m ingressum habuit, si verò dicat q per 30 vel 40 annos vel amplius, tunc admittatur essoniū dè malo lecti & hac ratione, quia cùm alii abbates medii & conventus semper p̱miserunt ipsum tenentē sine clameo, & postea post p̃dictum ingressum de tali ecclesia possēt alii abbates succedentes cum consensu conventus cōfirmare factum primi abbatis, videtur & p̃sumendum est quòd ipse tenens justè possideat & justo titulo, donec p̱betur in contrarium, unde facilius in hoc casu admittitur essonium de malo lecti. Sed quæro quare p̱cessum est per tale breve, cùm breve de ingressu non excedat tempus assisæ mortis antecessoris. Responsio. Per

f. 347.

low a certain writ of right, which is called a *præcipe*, like that where a person claims to hold land, which he seeks, from the lord the king in chief, which ought to be immediately determined in the court of the lord the king. There is likewise another writ which speaks of service and custom. Likewise a writ concerning the advowson of a church, which in like manner ought to be determined in the court of the king. There is likewise a certain writ which is called a "præcipe," from which by accident and from the discretion of the judge two essoins proceed, in which there is mention of a remote entry, for instance.

7. When a writ of right is turned into a writ of entry by the counting and contrariwise.

Enjoin A. that he justly &c. restore to such an abbot so much land with its appurtenances in such a place, which he claims to be the right of his church, and into which A. has no entry except through B. formerly such abbot, who demised it without the assent and will of his chapter. And in writs of this kind before judgment is given upon an essoin of bed-sickness, if it has been made, inquiries of this kind are to be made by the justiciaries. f. 347. It is to be inquired from the plaintiff for how long a time his adversary has held that land, and when the abbot died through whom he had entry, but if he should say, that he has held it for thirty or forty years or more, then let an essoin of bed-sickness be admitted, and for this reason, because since other intermediate abbots and the convent have always permitted him to be tenant without making a claim against him, and afterwards, after the aforesaid entry, other successive abbots of the said church might with the consent of the chapter have confirmed the act of the first abbot, it seems and it is to be presumed that the said tenant possesses justly and with a just title, until it be proved to the contrary, whence there is admitted more readily in this case an essoin of bed-sickness. But I ask wherefore are proceedings taken by such a writ, since a writ of entry does not exceed the time of an assise of mortdancester. The an-

talē narrationē & interrogationem non stat in vigore suo, nec retinet virtutem brevis de ingressu, imo illam excedit, et cùm p narrationem contra sui ipsius naturam incipiat esse q non fuit, ejus habebit naturam q incipit esse, & omnia habebit remedia quæ breve de recto, et maxime quantum ad essonia, secundum q superius dictum est. Item duo jacent essonia in brevibus de divisis, et si aliqua particula terræ remanet in contentione, et ubi ꝑcessum est sicut per breve de recto, & tunc demum jacent, cùm terra illa fuerit specificata. Item jacent duo essonia de servitio et consuetudine, postquàm deforceator responderit, et certum est[1] quid deduxerit in certū judicium, quia ad duellum vel magnam assisam ꝑcedi non potest, nisi super certa re & expressa. Item in quolibet brevi, ubi quis excedit formam brevis et loquitur de jure, et in quibus interseritur narratio, ut de jure, sicut aliquando cōtingit in brevi quo jure, et aliis, et ubi pervenitur ad magnam assisam, jacet essoniū de malo lecti, ut infra pleniùs dicetur. Et sciendum q non ad omne breve, q vocatur & incipit per p̄cipe, sequitur essonium de malo lecti, quia sunt plura quæ incipiunt per præcipe, quæ in nullo tangunt jus merum, quia sunt de ingressu ad firmam & ad terminum, vel breve q sequitur post novam disseysinam, ubi juratores fuerunt electi & visus terræ factus fuit, et quod fertur super disseysitorem vel filium ejus et hæredem vel alium ab eo qui disseysitus est vel ejus hærede. In brevibus vero de recto, quæ vocantur præcipe, & ubi duo jacent essonia, placitum ita aliquando mutari possit, quòd nullum jacebit essonium de malo lecti post mutationem illam, verbi gratia. Esto quòd petens petat terram aliquam de seysina avi sui, & dicat omnia verba

[1] "est" omitted, MS. Rawl. C. 160.

swer. By such counting and interrogatories it does not remain in its original vigour, nor does it retain the character of a writ of entry, nay, it exceeds it, and since by the counting contrary to its own nature it begins to be that which it was not, it will have the nature of that which it begins to be, and it will have all the remedies, which a writ of right has, and especially as far as regards essoins, according to what has been said above. Likewise two essoins lie in writs of partition, and if any particle of land remains in dispute, and where proceedings are had as by a writ of right, and then at last they lie, when the land has been specified. Likewise two essoins lie concerning a service and a custom, after the deforceant has answered, and he has deduced something certain to a certain judgment, because proceedings cannot be had to a duel or a great assise, except upon a certain and express thing. Likewise in any writ, where a person exceeds the form of the writ, and speaks of the right, and in which a count is inserted, as concerning the right, as sometimes happens in a writ of *quo jure* and others, where they arrive at a great assise, an essoin of bed-sickness lies, as will be explained below more fully. And it is to be known that upon every writ, which is called and begins with *præcipe*, an essoin of bed-sickness does not follow, because there are several which begin with *præcipe*, which in no respect touch the absolute right, because they are concerning the entry upon a farm and for a term or a writ which follows after novel disseysine, where the jurors have been chosen and a view has been had of the land, and which is directed against the disseysor or his son and heir, or another person from him who has been disseysed by him or his heir. But in writs of right which are called *præcipe*, and where two essoins lie, the plea may be sometimes so changed, that no essoin will lie concerning bed-sickness after that change, as for instance. Let it be that the plaintiff claims some land of the seysine of his grandfather, and

pertinentia ad duellum, & adjiciat quòd avus suus inde obiit seysitus, ut de feodo & jure, & quòd idem tenens non habet ingressum in terram illam, nisi per hoc quòd intrusit se in eandem post mortem avi sui, dum idem petens vel pater ipsius petentis fuit infra ætatem, vel alio modo, ut si dicat, & in quam non habet ingressum nisi per hoc quòd posuit se in terram illam, ut capitalis dominus, post mortem ipsius talis avi sui die quo obiit, & unde fiat jurata per judicium curiæ et per consensum partium, s. si tam petens quàm tenens in hoc consenserint, q aliter fieri non debet
f. 347 b. nisi ambo in juratam se posuerint, tunc statim cessabit essonium de malo lecti, secundū q superiùs fit mentio. Eodē modo impediri poterit essoniū de malo lecti, si finis objiciatur, qui factus fuit inter antecessorē ipsorum, & aliis modis consimilibus, ubi de consensu tenētis fit descēsus in brevi de recto usquè ad juratam, & èconversò in brevibus de ingressu, in quibus inprimis non jacuit nisi unicū essonium de malo veniendi. Accrescit aliquando per narrationem essonium de malo lecti, quia esto q tam petens quàm tenens omittat loqui de ingressu in narratione sua, & proponat in narratione sua de jure & proprietate, & inde (sicut sæpius contingit) emergat magna assisa vel duellum vel alia forma processus, ingressu prætermissio,[1] quod tamen rarò accidit, nisi de consensu partium, statim post diem datū partibus, poterit tenens se essoniare de malo veniendi, & postea de malo lecti, & hoc provenit ex narratione juris, potius quàm ex virtute brevis originalis. Et hoc prima facie videtur

[1] "prætermisso," MS. Rawl. C. 160.

says all the words appertaining to a duel, and adds that his grandfather died seysed thereof as of fee and of right, and that the said tenant has no entry into that land, except through these means, that he intruded himself into it after the death of his grandfather, whilst the said plaintiff or the father of the said plaintiff was under age, or in some other manner, as if he should say, and into which he has no entry except through these means that he put himself into that land, as a chief lord, after the death of his said grandfather on the day on which he died, and whereupon a jury is appointed through a judgment of the court and with the consent of the parties, to wit, if both the claimant and the tenant have agreed to this, which otherwise ought not to be done unless both have put themselves upon a jury, then forthwith an essoin of bed-sickness shall f. 347 b. cease, according to what has been above mentioned. In the same way an essoin of bed-sickness may be hindered, if a fine be objected, which has been made between the ancestors of the said parties, and in other consimilar ways, where with the consent of the tenant a descent is made in a writ of right down to a jury, and conversely in writs of entry, in which at first there lay only a single essoin of sickness by the way. An essoin of bed-sickness accrues sometimes through the counting, because let it be, that as well the claimant as the tenant omits to speak of the entry in his counting, and propounds counts respecting the right and the property, and thereupon (as happens frequently) a great assise or a duel results or some other form of process, the entry having been by the way omitted, which however rarely happens, except with the consent of parties, forthwith after a day has been assigned to the parties, the tenant may essoin himself for sickness by the way, and afterwards for bed-sickness, and this arises from the counting of the law, rather than in virtue of the original writ. And this at first sight seems to be contrary to that

esse contrarium ei q̃ dicitur, quòd secundū brevia originalia judicanda sunt essonia, & ab eis p̃cedunt. Ad q̃ sic poterit responderi, quòd quamdiu breve originale stetit in suo vigore, tantum unicū sequebatur essoniū. Sed postquā per narrationem partium & consensum eorū locum non tenuit & mutata narratione in jure p̃cessum est, tunc ad essonium de malo lecti pervenitur, & p̃cedendū erit tanquam ab initio p̃cessum esset p̃ breve de recto. Et de hiis quæ dicta sunt hic fit superius mentio de brevi de ingressu, sed hic fit repetitio ut addatur.

## Cap. V.

1. Qualiter essonium de malo veniendi debeat irrotulari et judicari de servitio domini regis.

Quia diversimodè fit irrotulatio essoniorum secundum diversitatē brevium & placitorum, ad instructionem minorum dicendū erit de irrotulatione. Sed quia de modo irrotulationis dictum est supra de illis qui peregrè p̃fecti sunt ultra mare, sive in Terram Sanctam pro generali passagio, sive pro simplici peregrinatione, sive citra mare Græcorum in peregrinatione versus S. Jacobum vel alibi, ideo de modo peregrinationis hm̃odi non erit hic repetendū, sed de servitio dn̄i regis, ita videlicet A. de N. qui est in servitio dn̄i regis ultra mare vel citra, essoniatur versus talem de tali placito per talem, & in quo casu differri poterit loquela quamdiu essoniatus fuerit in servitio domini regis, dum tamen habet ad manum quolibet die warrantum suum breve domini regis.

which is said, that essoins are to be judged according to the original writs, and they proceed upon them. To which it may be thus answered, that as long as the original writ has stood in its proper vigour, only a single essoin followed. But when from the counting of the parties and through their consent it has not kept its place, and the counting having been changed the proceeding has come to touch on the right, then an essoin for bed-sickness is arrived it, and the proceeding will have to be had, as if it had been from the beginning by a writ of right. And concerning the subjects here discussed mention has been previously made in treating of a writ of entry, but the repetition is made here, in order that an addition may be made.

## Chapter V.

1. How an essoin of sickness by the way ought to be enrolled and adjudged concerning the service of the lord the king.

Because the enrolment of essoins is made in different modes according to the diversity of writs and suits, for the instruction of the juniors we must speak of enrolment. But because concerning the mode of enrolment we have spoken above concerning those who have set forth on a journey abroad beyond the sea, whether it be to the Holy Land for a general passage, or for a single pilgrimage, or within the sea of the Greeks on a pilgrimage towards St. James or elsewhere, on that account we need not repeat here anything concerning the mode of the pilgrimage, but concerning the service of the lord the king; thus forsooth, A. de N., who is in the service of the lord the king beyond the sea or within it, is essoined against so-and-so in such a suit by so-and-so, and in which case the trial in court may be deferred for as long as he has been essoined in the service of the lord the king, provided however that he have at hand on a certain day as his warranty a writ of the lord the king.

2. Qualiter de simplici essonio de de malo veniendi.

Item si quis se essoniaverit de malo veniendi unus versus unum, tunc fiat sic irrotulatio de simplici essonio. Talis versus talem de tali placito per talē, & ita ꝙ semper in principio fiat mentio de cōm̄ in margine, & hoc si tantum fit unus petens & unus tenens, & quilibet eorum poterit se essoniare semel & simul eodem die sum̄onitionis vel vicissim, modo unus, modo alius, si petens hoc voluerit. Et ideo petenti competit essonium, quia non licet in hoc casu tenenti quod petenti non liceat, & sic fiat irrotulatio de petēte cùm
f. 348. tenens se essoniaverit. Et idem talis, s. petens versus talē, s. tenentē de eodē per talē. Et hoc si ambo se simul & eodē die essoniaverint, si autē vicissim, & tenens se priùs essoniaverit, & petens cōparuerit, & eundem diem in curia receperit, ad aliū diē (si voluerit) se essoniare poterit, & e conversò. Si petēs primo die se essoniaverit, & tenens cōparuerit, & eundē diem receperit, ad alium diē se essoniare poterit, & ita multotiens quamdiu petens essoniatus fuerit. Si autē plures sint ibi participes tenentes in com̄uni vel separatim, quilibet habebit essoniū suum, & suum essoniatorē, dum tamē si in com̄uni, poterūt se essoniare omnes simul, & eodem die vel vicissim, unus vel plures, donec quilibet habuerit unicum essonium, si voluerit, antequàm cōpareat, & non plura, & tunc fiat irrotulatio sic. Talis, s. tenens versus talem, s. petentē de tali placito ꝑ talē. Et eodem modo dicatur de aliis tenentibus omnibus, qui se essoniaverint, & de illis qui

Likewise if any one has essoined himself for sickness on the way, one against one, then let there be an enrolment of a simple essoin thus: So-and-so against so-and so in such a suit through so-and-so, and so that always in the beginning mention be made of the county in the margin, and this if there be only one claimant and one tenant, and each of them may essoin himself once and at the same time on the day of summons or in turns, first one and then the other, if the claimant wishes this. And accordingly the claimant is entitled to an essoin, because the tenant in this case is not allowed anything which is not allowed to the claimant, and let there be an enrolment concerning the claimant, when the tenant has essoined himself, thus: "And the said so-and-so, to "wit, the claimant, against so-and-so, to wit, the tenant, "concerning the said suit through so-and-so." And this if both have essoined themselves together and on the same day; but if in turns, and the tenant has first essoined himself, and the claimant has appeared, and has had the same day given to him in court, he will be able to essoin himself to another day, if he chooses, and conversely. If the claimant on the first day has essoined himself, and the tenant has appeared, and has had given to him the same day, he may essoin himself to another day, and so for as many times as the claimant shall have been essoined. But if there be several parceners there in common or separately, each shall have his own essoin and his own essoiner, provided however, if they are parceners in common, they may all essoin themselves together and on the same day, or in turns, one or more, until each of them has had a single essoin, if he shall wish it, before he appears, and not more, and then let the enrolment be thus: So-and-so, to wit, the tenant, against so-and-so, to wit, the claimant in such a suit through so-and-so. And in the same manner let it be said concerning all the tenants who have essoined themselves, and to those of them who are present the same

2. How concerning a single essoin of sickness on the way.

f. 348.

præsentes fuerint, dabitur idem dies, & contra absentes ꝑcedendum erit ad defaltam. Si autē plures sint tenentes qui tenuerint ꝑ diviso, quilibet habebit essonium suum sed non vicissim ut supra. Si autē unus tenens vel plures se essoniare debeant versus plures petentes, nō oportet mentionē facere de omnibus petentibus, sed de uno tantū, & de aliis in brevi nominatis, & eodem modo fiat de uno petente vel pluribus versus tenentes plures.

3. Si warrantus vocatus fuerit.

Si autem warrantus vocatus fuerit ab uno tenente vel pluribus, unus warrantus vel plures, quilibet ipsorū unicum habebit essoniū (si voluerit) simul vel vicissim, tam tenens qui vocavit, quàm warrantus qui vocatur, unus sive plures, & unde cùm warrantus se essoniaverit, sic fiat irrotulatio ; Talis warrantus, s. quem talis, s. tenens, vel alii tales vocaverunt ad warrantū, versus talem petentem, vel tales, de tali placito per talem. Si autem tenens præsens fuerit, habebit eundem diem, si autem eodem die se essoniaverit, tunc fiat irrotulatio sic : Idem talis, s. tenens versus eundem, s. petentem de eodem ꝑ talem. Si autem defaltam fecerit, sequatur petens defaltam. Si autē tenens se essoniaverit & warrantus cōparuerit, habebit eūdem diem. Si autē defaltā fecerit, expectet tenens vel ejus essoniator quartū diem, & tunc si non venerit, ꝑcedatur ad defaltā, & ꝙ dicitur de uno tenente & uno warranto essoniato, vel non essoniato, dicatur de pluribus tenentibus & attornatis. Et in fine notandū, ꝙ nec tenens versus warrantum nec warrantus versus tenentem, sed

day shall be given, and against the absent proceedings shall be had to a default. But if there be several tenants who hold their share in division, each shall have his own essoin, but not in turns as above. But if one or more tenants ought to essoin themselves against several claimants, it is not incumbent to make mention of all the claimants, but of one only and of the others named in the writ, and in the same manner let it be done concerning one or more claimants against several tenants.

3. If a warrantor has been vouched.

But if a warrantor has been vouched by one or more tenants, one or more warrantors, each of them shall have a single essoin (if he should wish it) together or in turns, as well the tenant who has vouched him, as the warrantor who is vouched, one or more, and hence when the warrantor has essoined himself, let the enrolment be made thus: Such a warrantor, to wit, whom so-and-so, to wit, the tenant or other such persons, have called to warrant against so-and-so the claimant or such claimants in such a plea through so-and-so. But if the tenant be present, he shall have given to him the same day, but if he has essoined himself on the same day, then let there be an enrolment thus: The said so-and-so, to wit, the tenant, against so-and-so, to wit, the claimant, concerning the said suit through so-and so. But if he has made default, let the claimant follow up the default. But if the tenant has essoined himself and the warrantor has appeared, he shall have the same day given to him. But if he has made default, let the tenant or his essoiner await the fourth day, and then if he has not come, let proceedings be had to a default, and what is said concerning one tenant and one warrantor who has been essoined or not essoined, may be said of several tenants and persons attourned. And in the end it is to be noted, that neither the tenant shall essoin himself against his warrantor, nor the warrantor against the tenant, but each of them shall essoin himself against

quilibet eorum se essoniabit versus principalem petentem, & sive petens sive warrantus se essoniaverit, semper exigatur ille, qui se non essoniavit.

## Cap. VI.

1. Qualiter essonium de malo veniendi judicatur.

Et ut[1] essonia de malo veniendi unde judicentur, inprimis inspicienda sunt brevia originalia, maximè si placitum novum fuerit, vel brevia judicialia, si sit novum, ut per hoc scire possit utrum essonium jaceat vel non. Si autem placitum novum sit & breve venerit, tunc fiat mentio in margine quòd placitum novum f. 348 b. sit. Si autem breve non venerit, eodem modo fiat mentio in margine q non breve, sed allocetur essonium si petens venerit, & dicatur ei, q habeat breve suum ad alium diem per aliud breve vicecomiti directum.

2. Si breve originale non venerit, breve vicecomiti quod faciat aliud venire.

Rex vicecomiti salutē. Præcipimus tibi q venire facias corā justiciariis &c. breve nostrū quod tibi venit de placito, quod sum̄onitum est in curia nostra coram justiciariis &c. inter talem petentem & talem tenentem, de tanto terræ cum pertinentiis in tali villa, vel aliter: breve nostrum q tibi venit de sum̄onendo talem q esset coram &c. ad respondendum tali mulieri de dote sua quæ eam contingit de libero tenemento, quod fuit talis quondam viri sui &c. vel aliter: talem querentē[2] et talem de attachiando talem de tali placito, et ita quòd semper fiat mētio in tali brevi de brevi originali quale fuerit, et tunc sic: Et tu ipse tunc sis ibi auditurus judiciū tuum de hoc, q breve illud præfatis justiciariis non misisti ad talem diem,

[1] "ut" omitted, MS. Rawl. C. 160. | [2] "inter talem querentem," MS. id.

the principal claimant, and whether the claimant or his warrantor has essoined himself, let him always be exacted, who has not essoined himself.

## Chapter VI.

1. How an essoin of sickness by the way is judged.

And that essoins for sickness on the way may be thereupon judged, in the first place the original writs are to be inspected chiefly if it be a new suit, or the judicial writs if it be a new suit, that it may be thereby known whether an essoin will lie or not. But if it be a new suit and the writ has come, then let mention be made on the margin [of the roll] that it is a new suit. But if the writ has not come, in the same manner let f. 348 b. mention be made in the margin that the writ has not come, but let the essoin be allowed, if the claimant has come, and let it be said to him, that he should produce his writ on another day through another writ directed to the viscount.

2. If the original writ has not come, a writ to the viscount that he cause another writ to come.

The king to the viscount greeting. We enjoin you that you cause to come before our justiciaries &c. our writ, which came to you concerning a suit, which is summoned in our court before our justiciaries &c. between so-and-so as claimant and so-and-so as tenant, concerning so much land with its appurtenances in such a vill, or otherwise: our writ which came to you about summoning so-and-so, that he should present himself before &c. to answer to such a woman concerning her dower, which belongs to her from a free tenement, which was so-and-so's her late husband's &c., or otherwise: between such a plaintiff and so-and-so about attaching so-and-so concerning such a suit, and so that there shall always be in such a writ mention of the original writ, of what character it was, and then thus; and do thou thyself be there then, in order to hear thy judgment on the circumstance, that thou didst not send that writ to the aforesaid justiciaries by such a day, as had been enjoined

sicut præceptum tibi fuit. Et habeas ibi hoc breve simul cum alio brevi. Teste &c. Si autem placitum vetus fuerit, q quidē erit post primum essonium, tunc eodem modo fiat mentio in margine q vetus est, et eodem modo si vetus, et resum̄onitum est, et tunc inspiciantur rotuli tam de placitis quàm de essoniis, ut sciri possit qualiter partes ultimo die litis à curia recesserunt, et per hoc perpendi poterit de facili quibus competat essonium, et quibus non, et si plures contineantur in brevi, quorum quidam se essoniaverint, et quidam non, fiat mentio in margine sic: Alius vel alii. Item si warrantus vel juratores vel recognitores, fiat mentio in margine sic: Exigatur warrantus vel exigantur juratores. Et eodem modo de omnibus fiat mentio quos tangit negotium, et quorum præsentia fuerit necessaria, et si vir essoniatus fuerit, fiat mentio super essonium sic: quòd habet uxorem et è converso, et qui si præsentes fuerint, habeant eundem diem; si autem defaltam fecerint, ꝓcedatur contra eos sicut inferiûs dicetur de defaltis. Si autem tenens se essoniaverit et petens non venerit nec breve infra quartum diem, tunc dicatur essoniatori quòd eat sicut venit, et judicialiter non absolvitur ab observatione judicii. Justic. autē ex quo warrātum non habent nec breve, nihil statuere possunt cōtra absentē, et si postmodū breve venerit, & dies sum̄onitionis non p̃terierit, ad diem illum procedi poterit ad defaltam, vel quamvis dies pr̃eterierit, de gratia justic. poterit loquela resuscitari, ut de termino S. Trinitatis anno regni regis H. decimotertio in itinere Midd. circa finem rotuli. Si

to thee, and produce there this writ together with the other writ. Witness &c. But if the suit be an old one, which it will be after the first essoin, then in the same manner let mention be made in the margin that it is old, and in the same way if it is old and has been re-summoned, and then let the rolls be inspected as well concerning the pleas as concerning the essoins, that it may be known in what manner the parties retired from the court on the last day of the suit, and thereby it may be understood easily who are entitled to an essoin, and who not so, and if several persons are contained in the writ, of whom some have essoined themselves, and some not, let mention be made in the margin thus: Another or others. Likewise if a warrantor or jurors or recognisors, let mention be made in the margin thus: Let the warrantor be exacted, or let the jurors be exacted. And in the same manner let mention be made of all persons, whom the business touches and whose presence will be necessary, and if a man has been essoined, let mention be made upon his essoin that he has a wife and the converse, and if they be present, let them have the same day given to them; but if they have made default, let proceedings be had against them as shall be described below in treating about defaults. But if the tenant has essoined himself, and the claimant has not come nor the writ within the fourth day, then let it be said to the essoiner, that he may go away as he came, and judicially he is not absolved from the observance of the judgment. But the justiciaries, since they have neither a warrantor nor a writ, can decide nothing against an absent person, and if the writ should come afterwards, and the day of the summons has not passed, up to that day proceedings may be had for a default, or, although the day has passed, by the favour of the justiciaries the cause may be revived, as in Holy Trinity term in the thirteenth year of the reign of king Henry in the Middlesex iter, about the end of the roll. But if the writ has come

autē breve venerit, et non petens, et tenens se essoniaverit, essoniatore tenentis quarto die se liti offerente pro dño suo, essoniator judicialiter quietus recedet de brevi illo, petens in misericordia, et sic fiat irrotulatio. Talis essoniator talis optulit se quarto die versus talē, de tali placito, et ille nō venit, et fuit petens, et ideo essoniator sine die. Si autē dies advenerit sum̄onitionis & neuter ipsorū cōparuerit, & breve venerit, tunc de gratia post intervallū admitti potest essoniū petētis, ad salvandū breve suū et diē sum̄onitionis. Vel ꝑcedi possit ad defaltā, quia hoc fit ad nullius p̄judiciū, & tenens sibi imputet quòd defaltā fecerit, quia si cōparuisset, posset recessisse quietus ꝑ judicium. Et
f. 349. ubi jaceat essoniū de malo veniendi, & ubi non, satis ꝑpendi poterit ex præmissis. Essonia vero de Terra Sancta, & de ultra mare, & de servitio dñi regis, qualiacunq̄ non ꝑveniunt ex natura breviū, sed à casu fortuitu & ab eventu, & ideo non sunt secundum naturam brevium judicanda.

## Cap. VII.

1. Qualiter irrotulatur essonium de malo lecti.

Sunt etiam duo brevia (secundum q̄ supradictū est), à quibus duo ꝑcedūt essonia, s. de malo veniendi & de malo lecti, & semper sequitur essoniū de malo lecti essonium q̄ ꝑcedit de malo veniendi, & quandoq̄ im̄ediatè, & quandoq̄ non im̄ediatè, ut si interveniat esso-

and not the plaintiff, and the tenant shall have essoined himself, the essoiner of the tenant on the fourth day offering himself to contest the suit on behalf of his principal, the essoiner shall withdraw judicially acquitted from that writ, the plaintiff shall be at the mercy of the crown, and let there be an enrolment thus: So-and-so the essoiner of such a person has offered himself on the fourth day to contest the suit against such a person in such a suit, and he has not come, and he was the plaintiff, and therefore the essoiner is without a day. But if the day of the summons has arrived and neither of them has appeared, and the writ has come, then the essoin of the plaintiff may of grace be admitted after an interval, to save his writ and the day of the summons. Or proceedings may be had for a default, because this is done without prejudice to anybody, and let the tenant impute to himself the fact that he has made default, because if he had appeared, he might have gone away acquitted by a judgment. And where an essoin of sickness by the way will lie, and where not, may be sufficiently ascertained from the premises. But essoins concerning the Holy Land, or concerning absence beyond the sea, or concerning an engagement in the service of the lord the king of whatever character they may be, do not arise out of the nature of the writs, but from a fortuitous casualty or from an event, and therefore they are not to be judged according to the nature of the writs. f. 349.

## Chapter VII.

But there are two writs (according to what has been said above), from which there proceed two essoins, to wit, concerning sickness by the way, and concerning bed-sickness, and an essoin of bed-sickness always follows an essoin which precedes it of sickness by the way, and sometimes immediately, and sometimes not immediately, 1. How an essoin for bed-sickness is enrolled.

niū de servitio dñi regis, s. breve de recto de terra, & alia de recto super jus nominata,[1] & fieri debet essoniū de malo lecti tertio die inclusivo ante diem datū p essoniatorem in essonio de malo veniendi. Irrotulari autē debet sic, si unus sit petens & unus tenens, primò scribatur in margine nomen com̃, ubi essoniatus jacuerit, sive jacuerit in eodē com̃ sive in alio, tunc sic. Talis apud talem locū in eodē com̃, vel si in alio com̃ jacuerit, tunc sic. Apud talē locum ubi essoniatus jacuerit. Si autē plures sint ibi tenentes simul & p̱ indiviso, omnes se essoniare possunt de malo lecti, simul & eodē die, si voluerint, & fiat irrotulatio de quolibet p se secundū formā primi essoniati, & secundū q̱ essoniatus jacuerit in eodē com̃, ubi terra fuerit, vel in alio, & omnes poterūt habere lāguorē, vel quidā eorum, vel nullus, secundum q̱ quatuor milites visores languorē judicaverint essoniato, vel non judicaverint. Et si omnibus simul judicaverint languorē vel quibusdā vel tantum uni, nō erit ibi nisi unicus languor p̱pter unitatē juris, q̱ habent essoniati, & unde si omnes p̃ter unum quocunq̃ tempore post essonium de malo lecti licentiam habuerint surgēdi, et unus se tenuerit in languorē, & habuerit annum & diē, nullus de cætero essoniū habebit de malo lecti, quia omnes simul vel p̱ quosdam ex eis vel p̱ unum tantū languorē habuerint.

2. Si adjungatur essoni- Adjungitur quandoq̃ essonium de malo veniendi essonio de malo lecti ratione plurium, qui tenent in

[1] "superius nominata," MS. Rawl. C. 160.

as if an essoin for the service of the lord the king should intervene, to wit, a writ of right to land and other writs of right above named, and the essoin for bed-sickness ought to be made on the third day inclusive before the day given through an essoiner in an essoin for sickness in the way. But it ought to be enrolled thus, if there be one claimant and one tenant, first let there be written on the margin the name of the county, where the person essoined was lying, whether he was lying in the same county or in another, then thus: Such a person at such a place in the same county; or if he is lying in another county then thus: at such a place where the person essoined is lying, But if there be several persons there tenants together and of an individual whole, all may essoin themselves for bed-sickness together and on the same day, if they wish, and let there be an enrolment of each by himself according to the form of the first person essoined, and according as the person essoined has lain in the same county where the land is, or in another, and they may all have a languishing illness, or some of them, or none, according as the four knights the viewers have adjudged to the person essoined a languishing illness or have not adjudged so. And if they have adjudged to all at the same time a languishing illness, or to some of them, or only to one, there shall not be there any but a single languishing illness on account of the unity of right, which the persons essoined have, and hence if all on account of one person at any time of an essoin for bed-sickness have obtained a licence to get up from bed, and one has kept himself in a languishing state, and has had a year and a day, no one henceforth shall have an essoin for bed-sickness, because all have had an essoin for a languishing illness together, or in the case of some of them, or in the case of one only.

2. If an essoin for sick-

Sometimes an essoin of sickness by the way is added to an essoin of bed-sickness in regard of several persons

um de malo veniendi essonio de malo lecti.

cōmuni & vicissim se essoniaverint, & tunc cōsequenter post essoniū de malo lecti irrotuletur essoniū de malo veniēdi in forma cōmuni. Et q̄ de uno dicitur tali, de pluribus qui essoniaverint de malo veniendi intelligaſ. Si autē quidam ex pluribus se essoniaverint de malo lecti, et quidā cōparuerit,[1] cûm nō sint essoniati de malo veniendi, eundē habent diē quē habet essoniatus, si ei malū transiens adjudicatur simul cū petēte. Ad q̄m diē si nō venerit essoniatus, nec milites qui eum viderunt, habebunt aliū diē. Itē esto q̄ secundo die ante diē datā p̄ essoniatorē, in essonio de malo veniendi essoniaverit se tenens de malo lecti, jam erit tenens in defalta, si petens petat inde judiciū, & multo fortius, si die placiti vel in crastino. Et de hac materia invenire poterit in rotulo de term̄ S. Hill' añ regis H. septimo in crastino Puř B. Mariæ, inter Vitalē Engayne & quendā de Ferclos de advocatione ecclesiæ de Ho. Et ad hoc facit de term̄ S. Michaelis
f. 349 b. anno regis ejusdem incipiente octavo, de eodem Vitali, nisi forte essoniatores ostenderint se fecisse essonium apud Turrim cum p̄testatione & recordo cōstabularii, vel si essoniatus primo die litis venerit, & essoniatores deadvocaverit, q̄ quidem facere poterit quocunquè tempore antequàm factum fuerit essoniū de malo lecti, cûm autem justic. ad diem datum residentes non fuerint in Banco, semper apud Turrim faciendum erit essonium, & eodem modo in com̄ apud castrum.

[1] "comparuerint," MS. Rawl. C. 160.

who hold in common and have essoined themselves in turns, and then consequently after an essoin of bed-sickness let an essoin of sickness by the way be enrolled in common form. And what is said of one person of this kind may be understood of several, who have essoined themselves for sickness by the way. But if some out of several have essoined themselves for bed-sickness, and some have appeared, since they have not been essoined for sickness on the way, they have the same day which the person essoined has, if an excuse for transient sickness has been adjudged to him together with the claimant. At which day if the person essoined has not appeared, nor the knights who have viewed him, they shall have another day. Likewise let it be, that on the second day before the day given through the essoiner in an essoin of sickness by the way the tenant has essoined himself for bed-sickness, the tenant will be already in default, if the claimant seeks judgment thereon, and much more so, if it be on the day of the plea or on the morrow. And on this matter a case will be found in St. Hilary term in the seventh year of king Henry on the morrow of the Purification of the blessed Virgin, between Vitalis Engayne and a certain de Ferclos, concerning the advowson of the church of Ho. And this is supported by a case in St. Michael's term at the commencement of the eighth year of the reign of the same king concerning the same Vitalis, unless by chance the essoiners have shown that they have made an essoin at the Tower with a protest and a record of the constable, or the person essoined has come on the first day of the trial, and has disavowed the essoiners, which he will be able to do at any time before an essoin of bed-sickness has been made, but when on the given day the justiciaries have not been resident at the bench, the essoin will always have to be made at the Tower, and in the same way in a county at the castle.

ness on the way be added to an essoin for bed-sickness.

f. 349 b.

## Cap. VIII.

1. In cujus persona non jacet essonium de malo lecti. Britton, vi. ch. ix.

Item videamus in cujus persona non jaceat essonium de malo lecti, licet agatur p talia brevia ut p̃dictum est, nunquam enim jacebit in psona petentis, quamvis in hujusmodi placitis cōpetat ei essonium de malo veniendi. Item nec in p̣sona alicujus attornati, si tenens forte attornatum fecerit unū vel plures, quia quamvis attornatus languidus sit, & de facto se essoniet de malo lecti, responsalem mittere non poterit, nō magis quā facere attornatum, nisi alium mittere possit nuntiū, cûm nullum ei cōpetat essonium, ad excusationem usq̃ ad quartum diem p̣pter alicujus impedimenti eventum, ut si ab hostibus vel adversariis detentus fuerit in vinculis, vel impeditus, sed quid si attornatus languidus fuerit, excusari eodem modo debet (ut videtur), sed non nisi usq̃ ad quartum diem. Quis enim magis vinculis arctatur quàm ille qui lāguidus est & graviter infirmatus. Itē nunquā jacebit in p̣sona warranti, nisi tunc demū postquâm psens in judicio warrantizaverit, &c. ita q̣ effectus fuerit dominus litis: ut de termino S. Michaelis añ regis H. septimo inter essonia in comitatu Sussex de Alano de S. Georgio. Item nō p̣derit essoniato essonium de malo lecti quin p̣cedatur ad defaltā, qui se sic essoniavit, q̣ jaceat extra potestatem domini regis ubi brevia sua non currunt nec returna, sive hoc fuerit in regno sive extra, & licet prima facie jaceat essonium, exequi tamen nō poterit p̣pter defectum. Item non jacet in persona alicujus nec in placito, ubi quis semel habuerit languorem, sive tenens principalis sit sive warrantus, non

## Chapter VIII.

1. In whose person an essoin of bed-sickness does not lie.

Likewise let us see in whose person an essoin of bed-sickness does not lie, although the action is brought through such writs as described above, for it will never lie in the person of the claimant, although in such writs he is entitled to an essoin of sickness on the way. Likewise not in the person of an attorney, if the tenant has perchance appointed an attorney, one or more, because although he may have a languishing illness and in fact has essoined himself for bed-sickness, he cannot send a representative, no more than constitute an attorney, except that he may send a messenger, since he is not entitled to an essoin, to make excuse for him up to the fourth day, on account of the accident of some impediment, as if he has been detained in chains or has been impeded by enemies or by adversaries, but what if the attorney has a languishing illness? he ought to be excused in the same way (as it seems), but not longer than up to the fourth day. For who is more fettered by chains than he who is languid and grievously infirm. Likewise it will never lie in the person of a warrantor, unless then at length, after being present before the judges he has warranted &c. so that he has become lord of the suit, as in St. Michael's term in the seventh year of king Henry, amongst the essoins in the county of Sussex, concerning Alan de Saint George. Likewise an essoin of bed-sickness will not profit an essoinee so as to prevent proceedings being had for a default, in the case of him who has thus essoined himself, that he lies beyond the power of the lord the king, where his writs and the returns to them do not run, whether this be within the realm or beyond it, and although at first glance the essoin would lie, it cannot be executed on account of the defect. Likewise it does not lie in the person of any one nor in a plea, where a person has once had an essoin for languor, whether he be a principal tenant or his warrantor, I do

dico q̃ quis languorem habuerit antequam fuerit adjudicatus, & dies datus apud Turrim, & postea visus coram justic. testatus, ita q̃ non surrexerit ante annum & diem, quod si aliquo casu fecerit, non dicetur habuisse languorem. Item in comitatu ubi justic. fuerint itinerantes nō jacet essonium de malo lecti in p̃sona ejus, qui se fecerit essoniari infra com̃ de tenemento q̃ fuerit in comitatu, quia facere poterit attornatum. Si autē extra com̃ nō sit, sive placita fuerint forinseca sive intrinseca, dum tamen tenens se essoniaverit extra com̃. Item non jacet essoniū de malo lecti in aliqua causa p̃sonali, criminali vel civili. Item nō jacet essonium aliquando in principio litis nisi post tempus, cùm res de qua agitur fuerit specificata, sicut in placito & breve de divisis. In brevi de serviciis & consuetudinibus, in brevi quo jure quis petat com̃uniam pasturæ non jacebit essonium de malo lecti, antequam
f. 350. res quæ petitur fuerit designata & tenens se defenderit p̃ duellū, vel se posuerit in magnam assisam. Item non jacet essonium de malo lecti ab initio ad breve de ingressu, nisi tunc demū cùm per narrationē vertatur ad breve de recto, & cùm tenens posuerit se in magnā assisam, vel se defenderit p̃ duellū. Itē ab initio jacet essonium de malo lecti & competit tenenti, & postmodum desinit cōpetere, ut si quis ab initio petere inceperit p̃ breve de recto, & post narrationē descensus descendat ad ingressum, & ubi breve de recto vertitur in breve de ingressu ut supra. Sed contra de termino S. Michaelis anno regni regis H. sexto in

not say that a person has an essoin for languor before it has been adjudged to him and a day given to him at the Tower, and he has been afterwards viewed, and it has been before the justicaries testified that he has not risen from his bed before a year and a day, which if he should have by any chance done, he will not be said to have had a languor. Likewise in the county, where the justiciaries are on circuit, an essoin for bed-sickness does not lie in the person of him, who has caused himself to be essoined within the county concerning a tenement which was in the county, because he could have constituted an attorney. But if he be not beyond the county, whether the pleas be foreign or domestic, provided however the tenant has essoined himself beyond the county. Likewise an essoin for bed-sickness does not lie in any personal suit, criminal or civil. Likewise an essoin sometimes does not lie at the commencement of a suit, unless after a time, when the thing concerning which the action is brought has been specified, as in a plea and a writ concerning partitions. In a writ concerning services and customs, in a writ of *quo jure* as to a claim for common of pasture, an essoin for bed-sickness will not lie, before the thing, which is claimed, has been designated f. 350. and the tenant has defended himself by a duel, or has put himself upon a great assise. Likewise an essoin does not lie for bed-sickness at the commencement upon a writ of entry, except then indeed when by the counting it is turned into a writ of right, and when the tenant has put himself upon a great assise or has defended himself by a duel. Likewise an essoin for bed-sickness lies from the commencement, and the tenant is entitled to it, and he afterwards ceases to be entitled to it, as for instance if a person in the commencement has begun to claim by a writ of right, and after the counting the descent descends to an entry, and where a writ of right is turned into a writ of entry as above. But on the contrary in St. Michael's term in the sixth year of the reign of

comitatu Devoñ inter essonia de banco, inter Matildam de Curtney petentē & Robertū de Courtney tenentē, quia ibi dicitur q essoniū de malo lecti allocatur cûm loquela fuerit super judiciū. Itē in eodē in essonio de malo lecti q allocandum erit postqm dies datus fuerit de audienda electione, ut inter Galfridū de Lucy in coñ Sussex. Itē in eodē coñ Sussex de priore de Blibing, q non jacet ad breve quo jure. Itē in eodē q non jacet ubi non fuit factū tertio die ante diē placiti in comitatu Gloc. de Roberto Toniguy.[1] Itē in eodē coñ Sussex de Philippo de Redham, q non jacet de ꝑte sororis ꝑ novum breve. Itē de termino P. añ regis H. decimoquarto in coñ Buck. q nō jacet de fine facto. Itē desinit essoniū de malo lecti cōpetere, ut si ꝑ breve de recto ꝑveniatur ad judicium, & fuerit ex utraq̃ ꝑte cōclusum, & remanserit loquela sup judiciū, & non habuerit aliqua pars ulteriùs quid ꝓponat, ꝉicet judiciū de loco in locum, cûm loquela jam de toto sit determinata, cùm nō sit aliquis qui dicere possit q recordū loquelæ quæ est sed q̃ fuit, secus tamē est si loquela terminata nō fuerit. Itē (secundū quosdā) in ꝑsona minoris non jacet essoniū de malo lecti, q quidem verū est, nō magis qm de malo veniēdi in causa possessionis nec in causa ꝓprietatis, quia ad causā ꝓprietatis infra ætatē nō respōdebit, nisi ita sit q infra ætatē feoffatus sit, & quo casu, cū respondere teneatur, habebit omnia reme-

[1] "Tonynguy," MS. Rawl. C. 160.

king Henry in the county of Devon, amongst the essoins of the Bench, between Matilda de Curtney the claimant, and Robert de Courtney the tenant, because it is there said that an essoin for bed-sickness is allowed when the argument is about the judgment. Likewise in the same year concerning an essoin of bed-sickness which will have to be allowed after a day has been given for hearing an election, as between Godfrey de Lucy in the county of Sussex. Likewise in the same county of Sussex concerning the prior of Blibing, that it does not lie in the case of a writ *quo jure*. Likewise in the same that it does not lie where it has not been made on the third day before the day of the plea, in the county of Gloucester concerning Robert Toniguy. Likewise in the same county of Sussex concerning Philip de Redham, that it does not lie on the part of a sister through a new writ. Likewise in Easter term in the fourteenth year of king Henry in the county of Bucks, that it does not lie concerning a fine which has been made. Likewise a person ceases to be entitled to an essoin for bed-sickness, as in the case where through a writ of right one has arrived at a judgment, and it has been concluded on either side, and the argument upon the judgment remains, and neither party has anything more to propound, although the judgment be from place to place, when the argument has been totally determined, when there is not any one who can speak of the record of the argument as pending, but as having been pending, it is otherwise however if the argument has not been terminated. Likewise (according to some) an essoin for bed-sickness does not lie in the person of a minor, which indeed is true, no more than an essoin for sickness on the way, in a cause of possession or in a cause of property, because in a cause of property he shall not answer, whilst he is under age, unless it be that he has been enfeoffed whilst under age, and in which case, as he is bound to answer, he shall have all the remedies

dia q̃ haberet quilibet major, ne sit deterioris cōditionis ꝑpter ætatē, licet essoniū de malo lecti & de malo veniendi warrātizare nō possit, nec jurare nec in essoniū de malo lecti respōsalem mittere, poterit hæc omnia facere ꝑ custodē, cū tutore autore. Itē nō jacet essoniū de malo lecti in ꝑsona warrāti pendēte placito de warrātia, anteqm warrantus warrantizaverit. Itē nō jacet ubi priûs se nō essoniaverit de malo veniendi, sed vertitur in essoniū de malo veniēdi. Item nō jacet ubi tenēs se essoniavit in villa de Lond̄, quia mitti potest ibi ad capiēdū attornatū, ut in com̃ Buck. de Hugone de Brock, & ita videtur q̃ corā justic. itinerātibus fieri debet idē si fuerit essoniatus in comitatu in quo itineraverint, secùs si extra. Itē nō jacet in br̃i quo warrāto. Itē nō jacet in ꝑsona attornati, ut si vir & uxor implacitati fuerint, vel ꝑticipes, vel duo extranei simul, vel in diversis placitis, quorum unus fuerit attornatus alterius, licet jaceat in ꝑsona unius in ꝑsona[1] ꝑprii placiti, tamen non jacet in persona ejusdem de alio placito, quia est attornatus. Itē non jacet ubi tertio die ante placitū cum[2] fuerit essoniatus. Item non jacet quia petens, sed exigantur
f. 350 b. plegii petentis propter defaltam. Itē non jacet de ꝑparte sororum. Itē non jacet in assisa ultimæ p̃sentationis quæ remansit ꝑpter ætatē, & resum̄onitio est in tali statu. Itē si quis essoniatus fuerit de malo lecti & petens non cōparuerit ante tertium diem placiti, allocabitur defalta ad alium diē, cùm essoniatores petant judicium de defalta. Itē idē erit si tenens

[1] " in persona unius ratione proprii | " placiti," MS. Rawl. C. 160.

[2] " cum," omitted, MS. id.

which a major would have, lest he be in a worse condition on account of his age, although he cannot warrant an essoin for bed-sickness or for sickness on the way, nor take an oath, nor send a person to answer for him in an essoin of bed-sickness, he may do all these things through a guardian, with a tutor's authority. Likewise an essoin of bed-sickness does not lie in the person of a warrantor pending a suit concerning a warranty before the warrantor has warranted. Likewise it does not lie where a person has not previously essoined himself for sickness on the way, but it is turned into an essoin of sickness on the way. Likewise it does not lie where a person has essoined himself in the vill of London, because he could have been sent there to take an attorney, as in the county of Bucks concerning Hugh de Brock, and so it seems that it ought to be done before the justices itinerant, if a person has been essoined in the county in which they are itinerant, otherwise if beyond it. Likewise it does not lie in a writ of *quo warranto*. Likewise it does not lie in the person of an attorney, as if the husband and wife have been impleaded, or parceners, or two strangers in blood together, or in different suits, of whom one has been the attorney of the other, although it would lie in the person of one in regard of his own suit, nevertheless it does not lie in the person of the same concerning the other suit, because he is an attorney. Likewise it does not lie when on the third day before the suit he has been essoined. Likewise it does not lie because he is the plaintiff, but let the sureties of the plaintiff be exacted on account of his default. Likewise it f. 350 b
does not lie in a suit of partition between sisters. Likewise it does not lie in an assise of last presentation which has been stayed on account of age, and the resummons is in such a state. Likewise if a person has been essoined for bed-sickness and the plaintiff has not appeared before the third day of the plea, a default shall be allowed for another day, when the essoiners claim judgment by default. Likewise it shall be the same if

tertio die se essoniaverit de malo veniendi. Itē non jacet de placito cōventionis. Itē nec de placito quo jure. Itē nec de placito finis facti. Itē si vir & uxor advocati[1] fuerint ad warrantū, si tenens principalis se essoniaverit de malo veniendi vel de malo lecti, antequam vir & uxor warrantizaverit, exigantur warrāti, & si vir mortuus fuerit, de novo sum̄oneatur uxor q̄ per se sit ad warrantizandum. Si autē uxor præmoriatur vel ambo, tunc sum̄oneantur hæredes. Itē nō jacet de ingressu ad terminū, vel cui uxor cōtradicere non potuit, vel de aliquo ingressu, nisi fuerit longinquus, videlicet, ubi breve de ingressu vertitur in breve de recto per electionē tenentis: ut de termino S. Michaelis anno regni regis H. septimo incipiente octavo in comitatu North., de Henry de Gayton versus priorem S. Johannis de North. Itē in eo q̄ non jacet essoniū de malo lecti, ubi non præcessit essonium de malo veniendi, sed vertitur in essoniū de malo veniendi, in comitatu Devon de Alicia Malet. Item in eodē comitatu Buck. de Hugone de Broke, q̄ non jacet in villa de Londō non magis quā in comitatu, quia potest essoniatus attornatum facere per quatuor milites. Itē cadit breve & essonium nō jacet ubi nō dirigitur breve de recto ad primum essonium de malo lecti, ut in comitatu Lanc. de Alic. de Lanc. & W. de Taham, Item nō jacet quia de dote, sive p̄ breve de recto de dote, sive per breve de dote. Itē nō jacet in placito ubi languor priùs fuit adjudicatus. Itē nec in placito de escābio faciendo vel m̄r̄ capiendo.[2] Item nec in placito q̄ quis p̄mittat p̄sentare, sed p̄cedatur ad defaltā

Britton, vi. ch. x. § 3.

[1] "vocati fuerint," MS. Rawl. C. 160.

[2] "vel cyrographo capiendo," MS. id.

the tenant on the third day shall have essoined himself for sickness on the way. Likewise it does not lie in a suit respecting an agreement. Likewise not in a suit of *quo jure*. Likewise not in a suit respecting a fine levied. Likewise if husband and wife have been called to warrant, if the tenant principal has essoined himself for sickness on the way or for bed-sickness, before the husband and wife have warranted, let their warranties be exacted, and if the husband has died, let the wife be summoned afresh that she appear alone to warrant. But if the wife has pre-deceased or both, let the heirs in such case be summoned. Likewise it does not lie concerning an entry for a term, or one which a wife cannot contradict, or concerning any entry, unless it has been remote, for instance, where a writ of entry has been turned into a writ of right by the election of the tenant, as in St. Michael's term in the seventh and eighth years of the reign of king Henry in the county of Northampton, concerning Henry de Gayton against the prior of St. John at Northampton. Likewise in the case when an essoin of bed-sickness does not lie where an essoin of sickness in the way has not preceded, but it is turned into an essoin of sickness by the way, in the county of Devon concerning Alice Malet. Likewise in the same county of Bucks concerning Hugh de Broke, that it does not lie in the vill of London no more than in a county, because the person essoined may make an attorney through the four knights. Likewise the writ falls and an essoin does not lie where a writ of right is not directed to the first essoin of bed-sickness, as in the county of Lancaster concerning Alice of Lancaster and William de Taham. Likewise it does not lie because it is concerning dower, whether it be by a writ of right concerning dower, or by a writ of dower. Likewise it does not lie in a suit where languor has been previously adjudged. Likewise not in suits concerning the making of an exchange or the taking of a chirograph. Likewise not in a suit that a person should permit a presentation, but let proceedings

Et illud idem fiat in placito de servitiis & cõsuetudinibus. Et q ad breve de ingressu non jaceat, de termino Sancti Michaelis anno regni regis H. sexto in comitatu Noĩ de Emma de Bella Fago, quia ibi dicitur q breve be ingressu æquipollet brevi assisæ mortis antecessoris.

2. Qualiter essonium de malo lecti judicandum sit.

Essonia de malo lecti judicantur ita, s. quod primo inspicienda sunt brevia originalia de recto, & si in suo statu remanserint vel per narrationem inceperint esse alterius naturæ, & desierint esse brevia de recto, vel si ab initio nõ fuerint brevia de recto & p narrationem inceperint esse ut p̃dictum est, vel p specificationem. Item si plures sint ibi tenentes participes & p indiviso, fiat de omnibus mentio. Eodem modo de warranto vocato. Itẽ si plures sint ibi participes, & plures dies p̃terierint & plura essonia, videndum erit quid actum fuit ad quemlibet diem, per inspectionem rotulorum, tam de essoniis, quàm de placitis, ut sciri poterit quis habuerit essonia & quot & quis non. Item videre oportet quòd lãguor non præcesserit. Item videri poterit quòd ille qui se essoniavit de malo lecti priûs habuerit essonium de malo veniendi. Sed esto q quis se essoniavit de malo lecti, cùm se essoniasse debuerit de malo veniendi, in utroquè casu vertitur in essonium de malo veniendi cùm utrumque competat, sed suo ordine, et qui facit id q majus est, facit id q minus est, sed non è contrariò. Si quis se essoniaverit de malo veniendi cùm se essoniasse deberet de malo

f. 351.

be had to a default. And let the same thing be done in a suit concerning services and customs. Likewise that it does not lie in a writ of entry, you have a case in St. Michael's term in the sixth year of the reign of king Henry in the county of Nottingham, concerning Emma of the Beautiful Beech Tree, because it is there said that a writ of entry is equivalent to a writ of mortdancester.

2. In what way an essoin of bed-sickness is to be judged.

Essoins of bed-sickness are thus judged. That in the first place the original writs of right are to be inspected, and if they have remained in their own nature or through the counting have begun to be of another nature, and have ceased to be writs of right, or from the beginning they have not been writs of right, and through the counting have begun to be as aforesaid, or through the specification. Likewise if there be several there tenant co-parceners, and for the whole estate, let mention be made of all. In the same way concerning the vouching a warrantor. Likewise if there be several co-parceners, and several days and several essoins have passed, it will have to be seen what has been done on each day, by an inspection of the rolls, as well concerning the essoins as concerning the pleas, that it may be known who has had essoins, and how many, and who not. Likewise it is incumbent to see that languor has not preceded. Likewise it is incumbent that it should be seen that he who has essoined himself for bed-sickness has previously had an essoin for sickness on the way. But let it be that a person has essoined himself for bed-sickness, when he ought to have essoined himself for sickness by the way, in each case it is turned into an essoin for sickness by the way when he is entitled to both, but in their proper order, and he who f. 351. does that which is the greater, does that which is the less, but not the converse. If any one has essoined himself for sickness by the way, when he ought to have essoined himself for bed-sickness, it does not avail nor

lecti, non valet nec excusat non venientē. Et eodem modo (ut videtur) si quis se essoniaverit de Terra Sancta vel de ultra mare cum se essoniasse debuerit de malo veniendi, vertitur essoniū de ultra mare in essoniū de malo veniendi, cûm cōpetierit. Itē esto q̄ quis se essoniaverit de Ibernia quasi de ultra mare, attornatur essoniū illud ad simplex essonium de malo veniendi, ut corā M. de P. in banco anno regis Henrici sexto de Gilberto Marescallo & Cecilia uxore ejus, & Allanū de Hyda qui vocavit ad warrantum Wilhelmum Marescallum in com̄ Pembrook, et qui se essoniavit de Ibernia, & non fuit allocatum, et postea fecit de hoc q̄ aliud essonium de malo veniēdi ad alium diem non fuit allocatum.

## Cap. IX.

1. Qualiter redduntur essonia de malo lecti et de malo veniendi per ordinem.

Judicatis igitur essoniis tam de malo veniendi q̄m de malo lecti, primò reddantur essonia de malo lecti, hoc modo, & ideo prius redduntur, quia priûs capiuntur. Sed si essonium de malo veniendi essonio de malo lecti adjungatur, essoniū de malo veniendi priûs reddatur, et vocetur essoniator, & reddatur essonium, sive pars tenens se essoniaverit sive ipse petens. Et si petens et pars tenens simul de malo veniendi, dicatur essoniatori petentis q̄ expectet quartum diē, si quidē quidā forte defaltā fecerit, et breve de videndo infirmum, sicut expectaret dominus ejus, & postea reddatur essoniū de malo lecti, ita q̄ si breve fuerit de

excuse his not coming. And in the same way (as it seems) if any one has essoined himself for absence in the Holy Land, or for absence beyond the sea, when he ought to have essoined himself for sickness by the way, the essoin of "ultra mare" is turned into an essoin of sickness by the way, when it is available. Likewise let it be that a person has essoined himself for absence in Ireland as if for absence beyond the sea, that essoin is attorned to a simple essoin of sickness by the way, as before Martin de Pateshull in banco, in the sixth year of king Henry, concerning Gilbert Marshall and Cecilia his wife, and Allan de Hyda who called as a warrantor William Marshall in the county of Pembroke, and who essoined himself for absence in Ireland, and it was not allowed, and he afterwards did therewith that another essoin for sickness on the way was not allowed to another day.

## Chapter IX.

1. How essoins of bed-sickness and of sickness by the way are returned in order.

Upon the essoins as well of sickness on the way as of bed-sickness having been judged, in the first place let the essoins of bed-sickness be returned in this manner, and they are returned first for this reason, that they are taken first. But if an essoin for sickness on the way is added to an essoin for bed-sickness, let the essoin for sickness by the way be first returned, and let the essoiner be called, and let the essoin be returned whether the party holding or the party claiming has essoined himself. And if the claimant and the party holding have essoined themselves together for sickness on the way, let it be said to the essoiner of the claimant that he should await the fourth day, if indeed some one by chance shall make default, and a writ for viewing the sick person, just as his principal would have awaited, and afterwards let the essoin for bed-sickness be returned, so that if there should be a close writ of right,

recto clausum, sive · p̃cipe in capite, q̃ im̃ediate porrigitur vicecomiti, & mittitur ad bancum, si essonium jaceat, ita reddatur. Primò exigantur essoniatores, secundò exigatur petens, vel ejus essoniator: et tunc si omnes p̃sentes fuerint, incōtinenti ita reddatur. Dicatur publicè essoniatoribus q̃ eant domum, & sic manifestum est q̃ non sunt essoniatores sed nuntii, qui nullum recipiūt diē, et postea dicatur: & tu petens N. vel essoniator, habebis breve de faciendo videre eum. Et si hoc fuerit malum transiens, ad talē terminum, vel talē diē certū. Et sic manifestum est q̃ petens recipit certū diē, scilicet com̃unem, ut tunc veniat & sequatur. De anno & die apud Turrim in Lond non fiat aliqua mētio: sed adhuc in pendenti est, utrum adjudicari debet languor vel non, & ad visores pertinet q̃ ei dent diē, postquā ipsum viderunt, à die visus sui in unum annum & unum diē apud Turrim Lond. Si autē b̃re de recto apertum fuerit, & translata fuerit loquela ad magnā curiā à comitatu, & q̃ semper remanet penes petentē: Inprimis exigendū erit b̃re de recto, scilicet ad secundum diem, dum placitum fuerit novum, & sufficit (quantum ad omnia essonia subsequentia) q̃ semel ostendatur, & cûm ostensum fuerit & lectum,
f. 351 b. reddatur essoniū. Et si petens illud ad manū non habuerit, non reddatur essoniū donec fuerit ostensum, & si infra quartū diem illud nō ostenderit, p̃cedatur ad defaltam cōtra ipsum petentē, et essoniatores per judiciū recedent sine die: ut in rotulo de termino S. Trinitat̃ añ regis Henrici decimoquinto in com̃ Wigorñ de Adā de Thornmarton; & ita fiat irrotulatio, cùm essoniatores se optulerint versus petentē quarto die:

or a *præcipe in capite*, which is immediately handed to the viscount and is sent to the bench, if the essoin should lie, let it be thus returned. First let the essoiners be called, secondly let the claimant or his essoiner be called, and then if all should be present, let it forthwith be thus returned. Let it be said publicly to the essoiners that they may go home, and so it is manifest that they are not essoiners, but messengers, who receive no day, and afterwards let it be said, "and thou the "claimant N. or his essoiner shall have a writ for caus- "ing him to be viewed." And if it be for a transient illness, "for such a term," or "to such a fixed day." And so it is manifest that the claimant receives a certain day, to wit, a common day, that he should then come and sue. Concerning a year and a day at the Tower in London let there not be any mention: but it is still pending, whether languor or not shall be adjudged, and it appertains to the viewers that they should give him a day, after they have seen him, from the day of their view to one year and one day at the Tower of London. But if the writ of right has been open, and the argument has been transferred from the county court to the great court, and which always remains in the power of the claimant: in the first place let the writ of right be called for, to wit, for the second day, whilst the suit is new, and it is sufficient (as far as regards all subsequent essoins) that it should be once shown, and when it has been shown and read, let the essoin be returned. And f. 351 b. if the claimant has not that at hand, let the essoin not be returned until it has been shown, and if he has not shown it within the fourth day, let proceedings be had for a default against the claimant himself, and the essoiners by a judgment shall depart without a day: as in the roll of Holy Trinity term in the fifteenth year of king Henry in the county of Worcester, concerning Ada de Thornmarton. And thus let the enrolment take place, when the essoiners have presented themselves against the

Tales & tales essoniatores talis, optulerunt se quarto die versus talē, qui petiit versus talē tantā ṽram, sed talis petens venit, sed non habuit breve suum de recto, nec primo, nec secundo, nec tertio, nec quarto die, & ideo essoniatores sine die de brevi illo, & poterit esse ratio, quia forte ab initio nullum fuit breve impetratum, nec exhibitum in curia domini capitalis. In reddendo vero essonio de malo lecti, exigendi sunt omnes quos loquela tangit, vir si uxor fuerit essoniata, & è contrariò. Item participes, ut habeant eundem diem. Itē quatuor milites electores, vel duodecim milites ad faciendā magnā assisam electi, si in tantū sit ꝑcessum. Item warrantus exigendus erit, donec warrantizaverit. Cùm autem ita redditum fuerit essonium de malo lecti, statim habebit petens, vel ejus essoniator, breve de mittendo quatuor milites ad videndū essoniatum, & judicandū utrum infirmitas qua se essoniaverit languor sit, vel malum transiens, secundū q̄ inferius dicetur.

2. Qualiter redduntur essonia de malo veni endi.

Redduntur quidē hoc modo: Primò vocetur publicè essoniator sic: ubi est essoniator talis? postea, ubi est talis, scilicet contra quem factum est essonium, vel essoniator, si forte fuerit essoniatus? Et si ambo ꝑsentes fuerint, affidabunt essoniatores de habendo warrantos suos, ad certum diem, cōtinentē in se ad minus spaciū quindecim dierum, & secūdum q̄ dictum est de uno intelligatur de pluribus, si fuerint essoniati, ꝑsentibus vero dabitur idē dies, & omnibus quos causa tetigerit. Si autē quidā eorū defaltā fecerint, dicatur petēti vel ejus essoniatori, q̄ expectet quartū diē suum

claimant on the fourth day. So-and-so the essoiners of such a person have presented themselves on the fourth day against so-and-so, who claimed against such person so much land, but the said claimant came, but he had not his writ of right, neither on the first nor on the second nor on the third nor on the fourth day, and accordingly the essoiners were without a day concerning that writ, and there might be reason, because perhaps from the beginning there had been no writ sued out, nor exhibited in the court of the superior lord. But in returning an essoin of bed-sickness, all those are to be called whom the argument touches, the husband if the wife has been essoined, and the converse. Likewise coparceners that they may have the same day. Likewise the four knights the electors, or the twelve knights the elected, to make a great assise, if proceedings have gone so far. Likewise a warrantor will have to be called, until he has warranted. But when the essoin for bed-sickness has been so returned, the claimant or his essoiner shall have forthwith a writ to the said four knights to view the party essoined, and to judge whether the infirmity for which he has been essoined be a languishing disease or a transient illness, according to what will be said below.

2. In what way essoins for sickness on the way are returned.

They are returned in this manner. First let the essoiner be called publicly thus: where is such an essoiner? afterwards, where is so-and-so, to wit, against whom the essoin has been made? or his essoiner, if by chance he has been essoined? And if both are present, the essoiners shall pledge themselves to produce their warrantors on a certain day, comprising in itself at least the space of fifteen days, and according to what has been said of one person let it be understood concerning several, if they have been essoined, but to those present the same day shall be given, and to all whom the cause touches. But if some of them have made default, let it be said to the claimant or to his essoiner, that he should await the fourth day with regard to those who have

versus illos qui non venerunt, ut ꝓcedatur ad defaltā, secundum q̄ inferiûs dicetur de defaltis. In essonio vero reddendo (ut supra de essoniis de malo lecti) exigātur om̄nes illi quos causa tetigerit, sicut ꝓticeps, warrantus, & alii, ut supra, recognitores in assisis, juratores in juratis, inquisitores in inquisitionibus, milites in electionibus faciendis, vel milites in magnis assisis, ut habeant eundē diem, si p̄sentes fuerint, vel q̄ attachientur omnes qui absentes fuerint, & si quidā illorum mortui fuerint, vel ut inutiles recusati, vel aliqua forte ratione excusati, loco ipsorum ponuntur alii per quos negotium melius possit expediri, & non cōtingit sæpius q̄ tales habeant essonium aliquod, vel excusationem.

3. Qui essoniatores affidabunt et qui plegios invenient, et de plegiorum datione. Britton, l. vi. ch. vi. § 4.

Non autē omnes essoniatores ad diem recipiendum affidabunt, sed illi tantum, qui sunt baronibus inferiores: barones vero & baronissæ, & eorum superiores, sicut comites, & eorum attornati, non affidabunt, sed plegios invenient. Martinus in banco anno septimo. Et si baro vel baronissa ad diem datum defaltam fecerit, sum̄oneantur plegii quòd sint ad alium diem ad audiendum judicium suum, quare non habuerunt eum, sicut eum plegiaverunt. Ratio vero diversitatis hujus talis esse poterit (ut videtur) q̄ ita nobiles & dignæ f. 352. ꝑsonæ in warrantizatione essonii nō per se jurabunt, sed per ꝓcuratores, scilicet plegios suos. Itē nō est alicui concedendum, q̄ in essonio alterius reddendo, diem recipiat petēs, maximè in absentia sua, vel sui attornati, vel sui essoniatoris, ꝓpter inconveniens q̄ sequi posset, quia si in absentia talium hæc fierent, & essoniator tenentis ante diem datū de essonio de malo veniendi à curia recederet, cûm partem ipsius tenentis

not come, that proceedings may be had to a default, according to what will be said below concerning defaults. But in returning an essoin (as above concerning essoins for bed-sickness) let all those be called whom the cause will touch, such as a coparcener, a warrantor, and others, as above, recognisors in assises, jurymen in juries, inquisitors in inquests, knights in making elections, or knights in great assises, that they may have the same day, if they be present, or that they may all be attached who may be absent, and if some of them are dead or have been refused as useless, or excused by chance for some reason, others are put into their places by whom the business may be better expedited, and it does not happen repeatedly that such persons have some essoin or excusation.

3. What essoiners shall pledge themselves, and shall find sureties, and concerning the finding of sureties.

But not all essoiners shall pledge themselves to accept a day, but only those, who are inferior to barons, but barons and baronesses and their superiors, such as counts and their attorneys, shall not pledge themselves, but shall find sureties. Martin de Pateshull in Banco, in the seventh year [of king Henry.] And if a baron or baroness on the given day have made default, let their sureties be summoned that they be present on another day to hear their judgment, wherefore they have not produced him as they pledged themselves to do. But the reason of this diversity may be of this character (as it seems), that persons of nobility and dignity in the warranting of their essoin should not swear by themselves, but by proctors, to wit their sureties. Likewise it is not to be conceded to any one that in returning the essoin of another person the claimant should receive a day chiefly in his own absence or in the absence of his attorney or of his essoiner, on account of the inconvenience which might follow, because if in the absence of such persons these things were done, and the essoiner of a tenant before the day given for an essoin of sickness on the way should retire from the court, when he f. 352.

defendere tencatur, si petens post diem acceptum se liti offeret, et judicium de defalta peteret, dies ab eo acceptus, cujus non interesset, pro non accepto haberetur. Si autē ambo essoniatores tam petentis quàm tenentis hoc fecerint, tūc de defalta non erit multum curandum, cùm uterq̃ illorum sit in eadē causa, nec sit aliquid, vel quasi quid, q̣ Judæus Judæo possit imputare. Cùm autē quis ita essoniatus fuerit de malo veniendi, & essoniator affidaverit, vel plegios invenerit de habendo eum ad diem datum p̣ ipsum, essoniator venire debet, & p̣ducere dominum suum ad warrantizandum essonium, quod p̣ eo fecerit.

4. Quid sit warrantizare essonium per sacramentum.

Est autem warrantizare, jurare quòd ita detentus fuit ægritudine in veniendo versus curiam, q̣ venire nō potuit p̣ lucrari nec p̣ perdere, & q̣ essonium fecit secundū legem terræ, quod quidem si ita fecerit, essonium suum warrantizabit. Si autem dominus principalis non venerit ad diem sibi datum per essoniatorem suum, nec etiam essoniator, essoniator se excusare poterit (si voluerit) & dominum suum per essonium, quod venire non potuit nec dominum suum habere sicut affidavit, propter malum q̣ ei in itinere veniendo versus curiam supervenit. Sed quoniam, si de hujusmodi fieret inquisitio longa, fieri posset loquelæ protractio, non est de warrantizatione essonii multum curandum, quia nō vertitur in alicujus præjudicium nisi ipsius petentis, q̣ quidem est ei dissimulandum. Itē esto q̣ tenens postq̃m diem habuerit per essoniatorem suum, & anteq̃m essoniū suum warrantizaverit, fecerit attornatum, & ad diem petatur warrantia de essonio, quæritur quis facere debeat warrantiam? Et videtur q̣

is bound to defend the part of the tenant himself, if the claimant after the day accepted should present himself to join issue, and should claim judgment by default, the day accepted by him who had no interest in the matter would be held as not accepted. But if both the essoiners of the claimant as well as of the tenant have done this, then much care need not be taken concerning the default, since both of them are in the same cause, nor is there any thing or as it were any thing, which Jew might impute to Jew. But when a person has been so essoined for sickness by the way and the essoiner has pledged himself or has found sureties to present him on a day given through him, the essoiner ought to come and produce his principal to warrant the essoin, which he has made on his behalf.

4. What it is to warrant an essoin by an oath.

But to warrant is to swear that he has been so detained by illness in coming towards the court, that he could not come to gain nor to lose, and that he had made an essoin according to the law of the land, which indeed if he has done so, he will warrant his essoin. But if the principal party has not come on the day given to him through his essoiner, nor even the essoiner, the essoiner may excuse himself (if he should wish) and his principal through an essoin, that he could not come nor produce his principal as he had pledged himself, on account of a misfortune which has come upon him in his way when coming to the court. But since, if there be an inquest into this matter, the prolongation of the trial might be long, much care is not to be taken concerning the warrantisation of an essoin, because it does not turn to the prejudice of any one except of the claimant himself, which indeed is to be dissembled to him. Likewise let it be that the tenant, after he has had a day through his essoiner, and before he has warranted his essoin, has made an attorney, and on the day a warranty of the essoin is claimed, it is asked who ought to make the warranty? And it seems that the

warrantus nō, quia se nō essoniaverit. Oportet igitur q̄ tenens veniat, & warrantizet, alioquin non erit essonium warrantizatum. Et quamvis attornatum fecerit, non p̄pter hoc se excludit, quin veniat & se defendat cum possit & velit. Item si quis attornatū fecerit, qui se essoniaverit, ante diem datum per essonium suum ipsum amovere velit, & alium substituere, non erit hoc ei tutum, anteq̄m dies p̄terierit, q̄ warrantizatum sit essoniū, quia nec ipse tenens, nec attornatus amotus illud warrantizare possunt. Et hæc poterit esse ratio q̄ attornatus amoveri nō debet postq̄m fuerit essoniatus, ut in p̄sona principalis domini sequatur essonium de malo lecti. In essonio de malo veniendi datur dies multipliciter à justiciariis, quādoq̄ corā seipsis, quandoq̄ coram justiciariis itinerantibus, & corā se ipsis quādoq̄ purè, quādoq̄ sub distinctione, hoc est, corā se ipsis nisi justiciarii prius itineraverint in com̄, vel corā justitiariis purè ad certū diē vel incertum. In quibus casibus sequitur essonium coram justiciariis itinerantibus, vel non sequitur, secundum q̄ tales diem receperint corā justiciariis de banco, per se in banco, vel per
f. 352 b. essoniatorē, eo excepto q̄ si diē ita ceperint incertum in bāco, ita vz. in advētu justiciariorum, oportet q̄ sequatur generalis sum̄onitio, q̄ p̄cedat advētum justiciariorū p̄ quindenā vel āplius, ex qua sum̄onitione sequi poterit essoniū de malo veniēdi, sicut in omnibus brevibus et assisis, q̄ im̄ediatè ponuntur à cancellaria in adventu justiciariorū. Si autē dies datus fuerit sic à justiciariis de banco corā justiciariis itinerātibus in

warrantor ought not, because he has not essoined himself. It is incumbent therefore that the tenant should come and should warrant, otherwise the essoin will not be warranted. And although he has made an attorney, he does not on that account exclude himself from coming and defending himself when he can and wishes so to do. Likewise if any one has made an attorney, who has essoined himself, and before the day given to him through his essoin he wishes to remove him, and to substitute another, this will not be safe for him, before the day has passed that his essoin should be warranted, because neither he himself, the tenant, nor the attorney who has been removed can warrant it. And this may be the reason why the attorney ought not to be removed after he has been essoined, that an essoin for bed-sickness may follow in the person of the principal. In an essoin for sickness on the way a day is given by the justiciaries in many ways, sometimes before themselves, sometimes before the justices itinerant and before themselves sometimes absolutely, sometimes with a distinction, that is, before themselves unless the justiciaries have previously made their *iter* in the county, or before the justiciaries absolutely on a certain day or an uncertain day. In which cases an essoin follows before the justices itinerant, or does not follow, according as such persons have had a day given to them before the justiciaries of the bench, through themselves in banco or through an essoiner, with this exception, that if they f. 352 b. have had an uncertain day given to them in banco, thus, to wit, upon the coming of the justiciaries, it is incumbent that a general summons should follow, which should precede the coming of the justiciaries by fifteen days or more, from which summons there may follow an essoin for sickness on the way, as in all writs and assises, which are immediately appointed by the Chancery upon the coming of the justiciaries. But if a day has been thus given by the justiciaries of the bench before

itinere cûm itineraverint, tunc erit ut supradictū est. In itinere verò justiciariorū essonia in principio itineris, aliquādo de cōmuni sum̄onitione, aliquando de placito t̄ræ, in quib⁹ casib⁹ habebūt essoniati diē rationabilē ad min⁹ quindenæ, sive t̄ra, q̄ petita fuerit, fuerit infra comitatū, vel extra, dum tamen extra, et visus petatur vel warrantus vocetur, erit quilibet dies certus et rationabilis. Si autem terra fuerit infra com̄, cùm lites sint potius restringendæ, erunt in p̄dictis casibus induciæ arbitrariæ trium dierum, vel quatuor, vel amplius, secundum distantiam locorum in quibus terra fuerit quæ petitur.

5. Si in die dato erratum fuerit, quid sit faciendum.

Cûm dies datus fuerit rationabilis, sive in banco sive in itinere, & erratū fuerit forte in die dato, ita q̄ rotuli nō conveniant sed discordent, ut si in uno rotulo cōtineatur q̄ dies datus fuit in quindecim dies, & in alio rotulo cōtineatur vel in pluribus, quòd in tres septimanas vel ulteriùs, semper p̄sumēdum erit de die, secundum q̄ in rotulo primo, s. p̄thonotarii, cujus irrotulationē sequi debent ōnes alii rotuli subsequentes, & inde trahere originē & autoritatē. Et licet plures sint in contrarium, et cùm primus rotulus ita inducat p̄sumptionem vehementem cōtra alios, stari[1] poterit p̄sumptio, si recordum justiciariorum conveniat cum primo. Si autem dissentiat à primo & conveniat cum aliis, vincitur p̄sumptio de primo rotulo, & stabitur eorum recordo. Si autem ab omnibus rotulis discordet, fiat eodē modo, q̄ eorum stabitur recordo. Et quid si ipsi justiciarii inter se discordes fuerint? stabitur ma-

[1] "præstari," MS. Rawl. C. 160.

the justiciaries itinerant in their *iter*, when they are on circuit, then it shall be done as aforesaid. But on the circuit of the justiciaries there are essoins at the beginning of the circuit, sometimes upon a common summons, sometimes upon a suit for land, in which cases the essoinees shall have a reasonable day at least of a fortnight, whether the land which is claimed be within the county or without, provided however if it be without, and a view is claimed or a warrantor vouched, there shall be a certain and reasonable day. But if the land be within the county, since lawsuits are rather to be restrained, there shall be in the aforesaid cases truces at pleasure for three or four days or more, according to the distance of the places in which the land is, which is claimed.

5. If there be an error in the day given, what is to be done.

When a reasonable day has been given, whether at the Bench or on the circuit, and there has been by chance an error as to the day given, so that the rolls do not agree, but are discordant, as if it should be contained in one roll that a day has been given at the end of a fortnight, and it be contained in another roll or in several rolls, that a day has been given at the end of three weeks or more, the presumption shall always be in favour of the day according to the first roll, to wit, that of the prothonotary, the enrolment of which all the other subsequent rolls ought to follow, and therefrom derive their origin and authority. And although there may be several to the contrary, since the first roll thus creates a vehement presumption against the others, the presumption may be abided by, if the record of the justiciaries agrees with the first roll. But if it differs from the first and agrees with the others, the presumption arising from the first roll is refuted, and their record shall be abided by. But if it should differ from all the other rolls, let it happen in the same manner that their record shall be abided by. And what if the justiciaries themselves are at variance with one another, the

jori parti. Si autē æquales numero, tunc digniori cum p̃sumptione rotulorum. Si autem quilibet ab alio, ꝑpter defectum ꝓbationis habebitur ille dies ꝓ non dato, & ꝓcedat loquela de novo.

## Cap. X.

1. Breve ad mittendum quatuor milites ad eum, qui essoniatus est de malo lecti, ad eum videndum.

Postquam essonia de malo lecti & malo veniendi adjornata sint, inprimis & ante omnia fiat br̃e de vidēdo essoniatum de malo lecti in hac forma: Mitte quatuor legales milites de com̃ tuo apud talem villam ad videndum utrum infirmitas, qua A. de N. in curia nostra coram justiciariis nostris apud W. essoniavit se de malo lecti, versus B. de N. de placito terræ vel hujusmodi, sit languor vel non, & si sit languor, tunc ponant ei diem à die visus sui in unum annum & unum diem apud Turrim London, quod tunc sit ibi
f. 353. inde responsurus, vel sufficientē ꝓ se mittat responsalē, & si non sit lāguor, tunc ponāt ei diē coram justiciariis nostris apud W. in octabis &c. q̃ tunc sit ibi inde responsurus, vel sufficientē ꝓ se mittat responsalē. Et dic quatuor militibus illis q̃ sint corā eisdem justiciariis nostris apud West. ad p̃dictum terminū ad testificandū visum suū, & q̃m diem ei posuerunt, & habeas ibi nomina militū, & hoc breve. Si autē terra fuerit in com̃ uno, et tenens jacuerit in alio, tunc ad vicecomitē illius comitatus, ubi essoniatus jacuerit, dirigatur breve, et dicatur in brevi de placito terræ in tali comitatu. Si autē plures, qui tenuerint in com̃uni ꝓ indiviso, vel sicut vir et uxor, se essoniaverint in eodē com̃ et jacu-

greater part shall be abided by. But if they are equal in number, then the one of greater dignity with the presumption of the rolls. But if one differs from another, then on account of the defect of proof that day shall be held not to have been given, and let the trial proceed afresh.

## Chapter X.

After the essoins for bed-sickness and for sickness on the way have been adjourned, in the first place and before anything let a writ be issued for viewing the person essoined for bed-sickness in this form: Send four loyal knights of your county to such a vill to see whether the illness, concerning which A. de N. has essoined himself for bed-sickness in our court before our justiciaries at Westminster against B. de N., in a suit for land or such like, be languor or not; and if it be languor, then let them appoint to him a day after the day of their view of him up to one year and one day at the Tower of London, that he be then there to make answer or send a sufficient answerer in his place; and if it be not languor, then let them appoint a day for him to appear before our justiciaries at Westminster in the octave &c., that he be there then to answer, or that he send a sufficient answerer in his place. And say to those four knights that they should present themselves before our said justiciaries at Westminster at the aforesaid time to testify their view and what day they have appointed to him, and have thou there the names of the knights and this writ. But if the land be in one county and the tenant be lying in another, then let a writ be directed to the viscount of that county, in which the essoinee shall be lying, and let it be explained in the writ concerning the suit for land in that county. But if several persons who have held that land in common as a whole, or as husband and wife, have essoined them-

1. A writ to send four knights to him, who has been essoined for bed-sickness, in order to view him.

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erint in diversis locis & diversis villis, tunc fiat breve hoc modo: Mitte quatuor legales milites de cõm̃ tuo apud talē villam ad videndū utrum infirmitas, qua C. de N. in curia nr̃a &c. essoniavit se de malo lecti versus eundē B. de placito terræ, sit languor vel non, & sic fiat de pluribus pticipibus in infinitū qui jacuerint in eodē comitatu in diversis villis & locis. Et tunc sic: Et si sint languores, licet plures judicari debeāt p̄ uno, tunc ponant eis diē à die visus sui in unū annū & unū diē apud Turrim Lond̄ q̄ sint tunc ibi respōsuri, ut supra. Et eodē modo dicatur de viro & uxore, si essoniati fuerint simul et in eodē cõm̃ in diversis locis. Si autem in eodē comitatu et eodē loco, tunc fiat breve sic: Mitte quatuor legales milites de cõm̃ tuo apud talē locū ad videndū utrū infirmitas, qua tales, talis & talis (et sic deinceps) in curia nostra &c. essoniaverint se de malo lecti versus talem de placito terræ, sint languores vel non, et si sint lāguores &c. ut supra. Si autē plures pticipes essoniati de malo lecti jacuerint in diversis comitatibus, quilibet habebit br̃e suū per se ad vicecomitem ubi jacuerint, secundū q̄ in uno comitatu jacuerint plures vel unus. Et cū plures pticipes (ut prædictū est) habere nō debeāt nisi unicū languorē, cûm unus vel plures simul essoniati fuerint de malo lecti, et dies datus petēti & pticipibus, qui p̃sētes erunt p̄ se vel p̄ essoniatores, si fuerint essoniati, nō possunt alii p̄ticipes ad aliq̃m diē se essoniare de malo lecti, donec cōstiterit utrū primo essoniatus de malo lecti languorē habuerit vel infirmitatē trāseuntē, q̄ si esset et utriq̃ eorū diversis tēpori-

selves in the same county and have lain in divers places and in divers vills, then let a writ be drawn up in this manner: Send four loyal knights of your county to such a vill in order to see whether the illness for which C. de N. has essoined himself in our court &c. for bed-sickness against the said B. in a suit for land be languor or not, and so let it be done concerning several parceners without end who have lain in the same county in divers vills and places. And then thus: and if there be langours, although several ought to be judged instead of one, then let them appoint for them from the day of their view of them a day at the end of one year and one day at the Tower of London, that they be there to answer as above. And in the same manner let it be said concerning a husband and wife, if they have been essoined together and in the same county in different places. But if in the same county and in the same place, then let the writ run thus: Send four loyal knights of thy county to such a place in order to see whether the illness, for which such persons, so-and-so and so-and-so (and so in succession) in our court &c. have essoined themselves for bed-sickness against so-and-so in a suit for land, be languors or not, and if they be languors &c. as above. But if several parceners essoined for bed-sickness shall lie in different counties, each shall have his own writ by himself to the viscount where they lie, according as one or more lie in one county. And when several parceners (as aforesaid) ought not to have more than a single essoin for languor, when one or more have been essoined together for bed-sickness, and a day has been given to the claimant and his parceners, who shall be present either by themselves or by their essoiners, if they have been essoined, the other parceners cannot essoin themselves for another day for bed-sickness, until it be ascertained whether the first person essoined for bed-sickness has a languor or a transient illness, because if it were so and a languor

bus languor esset adjudicatus, et diversus annus & dies datus, sic essent ibi duo lāguores de uno placito, q̄ esse non debet. Sed cum primo essoniatus surrexit per licentiā, vel malū transiens ei per milites adjudicatum fuerit, & de eo cōstiterit, statim incipiat particeps unus vel plures se essoniare de malo lecti, dum tamen p̄cesserit essonium de malo veniendi, et sic eodem modo (ut prædictum est) donec omnes eorum simul, vel quidā eorum, vel unus tantum unicum habuerit languorem. Cùm autem petens post essonium redditum, et diem certum acceptum, si sit malum transiens, statim sine mora habere faciat vicecomiti breve de videndo essoniatum.

2. De officio vicecomitis, cum susceperit breve.

Officium vero vicecomitis est cùm susceperit breve in comitatu, statim mittere quatuor legales milites ad videndum essoniatum. Assumere autē debet ad hoc milites præsentes, & non sum̄onere absentes, propter verba brevis, Mitte. Item non sufficit si mittat servientes, milites enim esse debent p̄pter verba brevis, mitte milites. Item nō sufficit mittere tres p̄pter verba brevis, mitte quatuor, & quia certus numerus adjicitur, scilicet quatuor, duo vel tres sufficiunt. Itē nō sufficit si duo vel tres sibi socios assumant usq; ad quatuor, quia videre nō debent nec testificari nisi mittantur de comitatu suo: ideo dicitur de comitatu, quia si alios mittere vellet, nō habeat coertionem. Item apud talē locū ideo dicitur, quia si essoniator in loco in essonio nominato nō inveniretur, ita posset esse in defalta, vel si modo debito se nō teneret in languore. Itē ad videndū utrum infirmitas &c. videre enim debēt

f. 353 b.

should have been adjudged to each of them at different times, and a different year and day appointed to them, there would thus be two languors in one suit, which ought not to be. But when the first essoinee has risen up through a licence, or a transient illness has been adjudged to him by the knights, and his case has been ascertained, forthwith let one or more parceners begin to essoin himself for bed-sickness, provided an essoin for sickness on the way has preceded, and so in the same manner (as aforesaid) until all of them together, or certain of them, or one only have had a single languor. But when the claimant after the essoin has been returned and a certain day appointed, if it be a transient illness let him forthwith without delay cause the viscount to receive a writ to view the essoinee.

2. Of the office of the viscount, when he has received a writ.

But it is the office of the viscount, when he has received the writ in his county, to send forthwith four loyal knights to view the essoinee. And he ought to assume for this purpose knights who are present, and not to summon absent knights, on account of the words of the writ, "send." Likewise it is not sufficient, if he sends serjeants, for they ought to be knights on account of the words of the writ, "send knights." Likewise it is not sufficient to send three, on account of the words of the writ "send four," and because a certain number is added, to wit, "four," two or three do not suffice. Likewise it does not suffice if two or three assume associates up to the number of four, for they ought not to view nor to testify, unless they are sent from his county, accordingly it is said "from the county," because if he wishes to send others, he would not have coercion. Likewise "at such "a place" is said for this reason, because if the essoiner be not found in the place named in the essoin, he might so be in default, or if he did not keep himself in the proper manner in a case of languor. Likewise it is to be seen whether the illness &c., for they ought to view the bodies, f. 353 b.

corpora, & diligenter inquirere de qualitate infirmitatis & circūstantiis, & secundū hoc judicare malum transiens vel languorem, & rationem inde reddere, si fuerint inde requisiti, & secundū hoc dare diē certum, vel in curia, vel apud Turrim Lond, & ideo apud Turrim ꝑpter locum certum, & ubi cōstabularius semper p̃sens esse debet, & cōtinuus, & qui testificari debet diem apparitionis & adventus, & hoc quia justiciarii nō semper cōtinuè ꝑ annum in banco sunt residentes. Et cùm ita in curia & in judicio datus sit dies partibus post annū & diem apud Turrim, nō sufficit si ꝑtes veniant (omisso loco illo Turris) coram justitiariis apud Westmonasteriū in banco, si tunc ibi fuerint residentes, quia aliud est dare diem apud Turrim, & aliud in bāco Westm̃, & sic cûm diem habuerint apud Turrim, à constabulario apud Turrim debet diem recipere ad bancū, si justiciarii fuerīt residentes in banco, vel si non residentes, tunc cùm justic. ibi primò venerint, nisi ita sit, q̃ tunc itinerantes fuerint in comitatu, quia tunc ibi detur dies, ex quo omnes loquelæ, quæ in banco fuerint positæ, sunt & remanent sine die ꝑ publicam declamationē inde factam. Si autem justic. residentes fuerint in banco, & similiter justiciarii itinerantes in comitatu ubi terra sita est quæ petitur, tunc detur dies corā justiciariis de bāco, & justiciarii de bāco diem præfigant corā justiciariis itinerātibus in comitatu quasi ordine observato. Et de hac materia pleniûs dicetur inferiùs, secundū q̃ partes venerint apud Turrim vel nō venerint. Item bene cōtingere poterit q̃ essoniatus apud Turrim venire non possit ad diem suum, quia forte lāguor

and inquire diligently concerning the character of the illness and the circumstances, and accordingly to judge whether it be a transient illness or a tedious disease, and to render an account thereof if they be required, and acordingly to appoint a certain day either in the Court or at the Tower of London, and for this reason at the Tower, as being a certain place and where the constable ought always to be present and continuously so, and who ought to testify to the day of their appearance and arrival, and this because the justiciaries are not continuously resident throughout the year at the Bench. And when there has thus been given in the court and in judgment a day to the parties after a year and a day at the Tower, it is not sufficient if the parties should come (having omitted the place of the Tower) before the justiciaries at Westminster in the Bench, if they should be then resident therein, for it is one thing to appoint a day at the Tower, and another at the Bench in Westminster, and so when they have had a day at the Tower, they ought to receive from the constable at the Tower a day at the Bench, if the justiciaries are in residence at the Bench, or if not in residence, then when the justiciaries have first come there, unless it so be that they are then itinerant in the county, because in that case let a day be given there, since all the trials, which have been placed at the Bench, are and remain without a day by a public declaration there made aloud. But if the justiciaries should be resident in the Bench, and in like manner there are justiciaries itinerant in the county, where the land is which is claimed, then let a day be given before the justiciaries of the bench, and let the justiciaries of the bench appoint a day before the justiciaries itinerant in the county as it were order being observed. And on this matter more will be said below, according as the parties have come to the Tower or have not come. Likewise it may well happen that an essoinee cannot come to the Tower on the day given to him, because his languor has turned into a

vertitur in morbū sonticū, scilicet in morbū incurabilē, quo casu, cûm venire nō possit, mittere debeat sufficientē respōsalem qui in se suscipiat judicium, & ejus responsionē oportet habere ratā, secundum q̄ inferiùs dicetur. Item dicere debet vicecomes militibus q̄ sint ad diem certum in brevi cōtentum corā justiciariis apud W. ad testificandū visū suū, & q̄m diem ei posuerunt. Si autem petens diligens fuerit in p̄secutione, & vicecomes negligens fuerit cùm bñe susceperit, tūc p̄cipiatur vicecom̄ (sicut prius) q̄ ipse sit auditurus judiciū suū, & sic puniatur ejus negligentia. Si autē steterit p̄ petentē, & nō p̄ vicecomitē, quo minus essoniatus visus fuerit, tunc in defectu petentis detur essoniato licentia surgendi, si licentiā petierit & convaluerit de infirmitate, & dabitur petenti alius dies, & mandetur essoniato q̄ statim veniat ad curiam, ut habeat eundem diē, quia cûm tenens essoniatus fuerit de malo lecti, postquam in curia semel cōparuerit, sine
f. 354. visu quatuor militum, vel sine licentia impunè surgere nō poterit, secundū q̄ inferiùs dicetur. Si autē nec petens nec vicecomes negligens fuerit, & milites visum nō fecerint forte, vel cùm fecerint nō venerint ad testificandū, tunc ad diē datum, offerente se liti petēte versus tenentē & milites, tunc attachientur milites secundum q̄ nomina eorum in brevi scribuntur, p̄ tale bñe, & fiat ita irrotulatio si vic. miserit bñe.

3. Irrotulatio si visores

A. optulit se quarto die versus B., & B. nō venit, nec quatuor milites, (vel sic & melius) A. optulit se

malignant disease, to wit, into an incurable disease, in which case, since he cannot come, he ought to send a sufficient representative to take upon himself the judgment, and it is incumbent that his answer should be ratified according to what will be said below. Likewise the viscount ought to say to the knights, that they should be on a certain day contained in the writ before the justiciaries at Westminster to testify to their view, and as to what day they have assigned to him. But if the claimant has been diligent in prosecuting his suit, and the viscount has been negligent when he has received the writ, then let it be enjoined to the viscount (as before), that he himself be present to hear his judgment, and so let his negligence be punished. But if it has been caused through the claimant and not through the viscount that the essoinee has not been viewed, then in the defect of the claimant let a license of getting up be granted to the essoinee, if he has asked for a license and has become convalescent from his illness, and another day shall be granted to the claimant, and let an order be sent to the essoinee that he forthwith come to the court, that he may have the same day, because when the tenant has been essoined for bed-sickness, after he has once appeared in court, he cannot rise with impunity from his bed without a view on the part of the four knights or without a license, according to what will be said below. But if neither the claimant nor the viscount has been negligent, and the knights by chance have not made a view, and when they have made it, have not come to testify to it, then on the day granted, the claimant offering himself to take issue with the tenant and the knights, then let the knights be attached according as their names are written upon the writ by a writ of this kind, and let the enrolment be made thus, if the viscount has sent a writ. f. 354.

3. An enrolment, if the

A. presented himself on the fourth day against B., and B. has not come nor the four knights, (or thus and

non venerint.

quarto die versus talē qui se essoniavit de malo lecti versus eundē A. de placito terræ, & talis nō venit, nec milites qui fecerunt visum de eo, nec vicecomes misit brē, & ideo (sic ut prius) p̃cipiatur vicecomiti q̄ vicecomes sit auditurus judicium suum &c. Et semp̄ dabitur participibus, & parti idem dies. Si autē vicecomes miserit breve ad primū diē, & milites nō venerint, & vicecomes mādaverit nomina militū, tunc fiat irrotulatio sic: A. optulit se quarto die versus B. qui se essoniavit de malo lecti versus eundē A. de placito terræ &c., & B. nō venit, nec milites qui fecerunt visum de eo, s. C. D. E. F., & vicecomes misit breve, & ideo milites attachientur q̄ sint ad talē diem ad testificādum &c., & idem dies datus est tali petenti, & talibus p̄ticipibus &c. Forma brevis talis est.

4. Breve de attachiendo milites.

Rex vic. salutē. Pone p̄ vadium et salvos plegios C. D. E. F. visores infirmitatis, qua A. de N. in curia nr̃a corā justic. nr̃is apud Westm̃ essoniavit se de malo lecti versus A. de N. de placito terræ in tali villa, vel de placito terræ in tali villa,[1] vel in tali alio comitatu,[2] q̄ sint coram justiciariis nostris apud Westm̃ ad talem diem ad testificādum visum suum, & q̃m diē ei posuerunt, et ad ostendendum quare nō fuerunt coram eisdem justiciariis nostris apud W. ad talem diem sicut eis p̃ceptū fuit, & habeas ibi nomina plegiorū & hoc br̃e. Ad q̃m diem poterit petens se essoniare si voluerit, & p̄ticipes similiter: vel cōparere, & habere aliū diem p̄ se, vel p̄ essoniatores suos. Et si vicecom̃ milites attach. & breve miserit ad aliū diem,

[1] "vel de placito terræ in tali villa," omitted MS. Rawl. C. 160.

[2] "vel in tali in alio comitatu," MS. id.

better,) A. presented himself on the fourth day against so-and-so who essoined himself for bed-sickness against the said A. in a suit for land, and so-and-so has not come, nor the knights who made the view of him, nor has the viscount sent a writ and therefore (so as before), let it be enjoined upon the viscount that the viscount be present to hear his own judgment &c. And the same day shall always be given to the parceners and to the party. But if the viscount has sent a writ on the first day, and the knights have not come, and the viscount has announced the names of the knights, then let there be an enrolment in this manner: A. has presented himself on the fourth day against B., who has essoined himself for bed-sickness against the said A. in a suit for land &c., and B. has not come, nor the knights who have made a view of him, to wit C. D. E. F., and the viscount has sent a writ, and accordingly let the knights be attached that they be present on such a day to testify &c., and the same day is granted to the said claimant and to so-and-so his partners &c. The form of the writ is of this kind. knights have not come.

The king to the viscount greeting. Put under bail and safe sureties C. D. E. F., the viewers of the illness for which A. de N. in our court before our justiciaries at Westminster has essoined himself for bed-sickness against A. de N. in a suit for land in such a vill, or in such a vill in another county, that they present themselves before our justiciaries at Westminster on such a day to testify to their view, and to the day which they have assigned to him, and to show wherefore they did not present themselves before our said justiciaries at Westminster on such a day as was enjoined to them, and do thou have there the names of the sureties and this writ. At which day the claimant may essoin himself, if he shall wish, and his partners in like manner: or he may appear and have another day through himself or through his essoiners: and if the viscount should attach 4. A writ for attaching the knights

et essoniatus nō venerit, nec milites, tūc petēte vel ejus essoniatore, primo, secundo, tertio, vel quarto die se liti offerente, attachientur milites p meliores plegios, et fiat ita irrotulatio: A. optulit se quarto die versus B. qui se essoniavit de malo lecti versus eundē A. de placito terræ &c. (ut supra) et B. nō venit, nec milites qui fecerūt visum de eo, s. C. D. E. F., et vic. mandavit q attachiati fuerunt, s. C. p tales, & D. per tales, & sic de aliis, unde ponātur per meliores plegios q sint ad talem diē. Idem dies datus est parti petenti, et participibus tenentibus. Forma brevis talis est: Pone p vadiū & salvos plegios C. D. E. F. visores infirmitatis, qua B. de N. in curia nostra &c. essoniavit se de malo lecti versus A. de placito terræ in tali villa, q sint coram &c. tali die ad testificandum visum suum, & quem diem ei posuerunt, et ad ostendendum quare non fuerint coram justiciariis &c. ad talem diem sicut attachiati fuerunt. Et summoneas per bonos summonitores tales primos plegios C. & tales primos plegios D., & sic de aliis, quòd sint coram præfatis justic. nostris ad prædictum diem ad audiendum judicium suum de hoc, quòd præfatos C. D. E. F. coram præfatis jus-
f. 354 b. ticiariis nostris ad talem diem non habuerunt, sicut eos plegiaverunt. Et habeas ibi sum̄onitores, nomina secundorum plegiorū, et hoc breve. Teste &c. Et ad quem diem si milites non venerint, omnes plegii erunt in misericordia, et præcipietur tunc vicecomiti q habeat corpora militum ad alium diem, et q sint ad audien-

the knights and shall have sent a writ for another day and the essoinee shall not have come, nor the knights, then upon the claimant or his essoiner on the first, second, third or fourth day presenting himself to join issue, let the knights be attached by better sureties, and let the enrolment be made thus: A. has presented himself on the fourth day against B. who has essoined himself for bed-sickness against the said A. in a suit for land &c., (as above), and B. has not come, nor the knights who have made a view of him, to wit, C. D. E. F., and the viscount has ordered that they should be attached, to wit, C. by such persons and D. by such persons, and so concerning the others, whereby they should be put under better sureties that they should present themselves on such a day. The same day has been assigned to the party claiming and to the tenant parceners. The form of the writ is of this kind: Put under bail and safe sureties C. D. E. F., the viewers of the illness, for which B. de N. in our court &c. has essoined himself for bed-sickness against the said A. in a suit for land in such a vill, that they present themselves before &c. on such a day to testify to their view and as to what day they assigned to him, and to show wherefore they were not present before our justiciaries &c. on such a day as they were attached. And summon by good summoners the said first sureties C. and the said first sureties D., and so of the others, that they be present before our aforesaid justiciaries on the aforesaid day to hear judgment against them upon this, that they have not produced the aforesaid C. D. E. F. before our aforesaid justiciaries on the aforesaid day, as they pledged themselves to do. And produce there the summoners, the names of the second sureties, and this writ. Witness &c. And on which day if the knights have not come, all the sureties shall be at mercy, and it shall then be enjoined to the viscount that he produce the persons of the knights on another day, and that they be present to

f. 354 b.

dum judiciū suum de pluribus defaltis, et si ad diem illum non venerint, iterum p̃cipietur vicecomiti quòd distringat eos p terras et catalla, quòd sint ad alium diem, et semper idem dies dabitur parti & particip̃ibus, & si tunc non venerint, aggravabitur districtio (secundum q̃ inferiùs dicetur plenius de attachiamentis et districtionibus in personalibus actionibus). Item cùm omnes visum fecerint, tamen non venerint ad testificandum primo die nisi tātum unus, duo, vel tres, quo casu aut essoniatus venit aut non venit, & cum non venerit, petente se liti offerente, fiat sic irrotulatio. Quia nullus quatuor militū testificari potest, vel recordum habeat sine altero, quia aut omnes testificantur aut nullus. Sed quare non sufficiunt duo vel tres ad certificandum sine quatuor, secundū illud Evangelium, q̃ in ore duorum vel triū testium stat omne verbum? respondeo, q̃ non sufficiunt duo, quia ubi certus numerus adjicitur à lege vel constitutione quacunquè ratione, duo non sufficiunt, sicut hic, et ad audiendum quem quis attornare voluerit loco suo ad lucrandum vel p̃dendum, ubi similiter quatuor sunt necessarii ut infra
Cf. fol. 61. pleniùs dicetur. Item in testamentis illud idem, ubi vii. testes sunt necessarii, et alibi in multis locis. Irrotulatio: A. optulit se quarto die versus B. qui se essoniavit &c. ut supra, et B. non venit, nec milites qui fecerunt visum de eo, nisi tantum duo, scilicet C. et D. et ideo E. et F. qui non venerunt, attachientur q̃ sint ad talem diem ad testificandum &c. ut supra. Et dabitur dies parti et p̃ticipibus, et postea attachientur per meliores plegios, et procedatur (ut supra) ad dis-

hear judgment against themselves for several defaults, and if they have not come upon that day, let it be a second time enjoined upon the viscount to distrain them by their lands and chattels, that they be present on another day, and the same day shall always be given to the party and to his partners; then if they have not come, the distraint shall be enhanced (according to what will be said below more fully concerning attachments and distraints in personal actions). Likewise when they have all made a view, and nevertheless have not come to testify on the first day, except only one, or two, or three, in which case the essoinee has either come or not come, and when he has not come, upon the claimant offering to join issue, let the enrolment be made thus. Because none of the four knights can testify or have a record without the others, because either all testify or none. But why do not two or three suffice to testify without four, according to the passage in the Gospel, that in the mouth of two or of three witnesses every word standeth? I answer that two do not suffice, because where a certain number is added by the law or by a statute for whatever reason, two do not suffice, as in this case, and to hear whom a person has wished to attorn in his place to gain or to lose, where in like manner four are necessary, as will be explained more fully below. Likewise the same thing takes place in the case of testaments, where seven witnesses are necessary, and elsewhere in many places. The enrolment: A. has presented himself on the fourth day against B. who has essoined himself &c. as above, and B. has not come nor the knights who have made a view of him, except only two, to wit, C. and D., and therefore let E. and F., who have not come, be attached that they should come on a certain day to testify &c. as above. And a day shall be given to the party and to his partners, and afterwards let them be attached by better sureties, and let proceedings be had as above to a distraint until they

trictionem donec omnes venerint, et testificentur simul: et formari poterunt brevia secundū q superius dicitur per exemplū. Cùm autē quatuor milites simul missi fuerint ad videndum, anteqm viderint, vel postqm viderint, anteqm testificentur, contingat q unus vel duo vel tres morientur, quo casu oportet q alii loco ipsorum substituantur, et q tunc omnes simul videant, et simul testificentur, p tale breve.

5. Si unus visorum infirmus sit vel inutilis, ponatur alius loco suo.

Rex vic. salutem. Præcipimus tibi q loco C. unius visorū qui mortuus est, vel infirmus, vel ita debilitatus, q itinerare nō potest, vel sic: loco C. unius visorū qui mortuus est, in loco D. alterius visorū qui infirmus est ac debilitatus, vel inutilis q itinerare nō potest, visor̃ infirmitate[1] qua D. de N. in curia nr̃a &c. ut supra, ponas aliū vel alios milites, et alium vel alios milites simul cū E. et F. de N. prius missis ad p̃dictū D. ad vidēdū utrū infirmitas quā p̃dictus B. in curia nostra &c. essoniavit se de malo lecti versus p̃dictū A. de placito terræ in N. sit languor &c. vel nō &c. ut supra in primo brevi originali. Itē si unus vel duo (secundū q p̃dictū est) mortui nō fuerint, nec debilitati, sed forte ex aliqua causa necessaria se transtulerint extra com̃ ita q alii p defectu talis visū facere nō possūt, vel testificari, tūc loco taliū ponātur alii qui visum faciant, et tunc dicatur q loco C. et D. visorum
f. 355. infirmitatis qua &c. ponas alios milites et illos milites simul cum talibus &c. ut supra &c. usq̃ ad clausulam, scilicet, vel sufficientē p se mittant responsalem, & tunc addatur in fine ratio, quare illi priùs missi videre infirmum nō potuerūt, p defectu C. et D., et dicatur in fine brevis ita: Et unde p̃dicti E. et F. in curia nos-

[1] infirmitatis, MS. Rawl. C. 160.

all have come, and let them testify together, and writs may be drawn up in accordance with what has been said above for example. But when the four knights have been sent together to view, before they have viewed, or after they have viewed, before they have testified, it may happen that one or two or three shall die, in which case it is incumbent that others be substituted in the place of them, and that thereupon they should all view, and testify together by a writ of this kind.

5. If one of the viewers be infirm or inefficient, let another be put into his place.

The king to the viscount greeting. We enjoin you that in the place of C., one of the viewers, who is dead or infirm or so debilitated that he cannot travel, or thus: in the place of C., one of the viewers, who is dead, in the place of D., another of the viewers, who is infirm or is debilitated or inefficient so that he cannot travel, the viewers of the illness whereby D. de N. in our court &c. as above, you appoint another or other knights, and another or other knights, together with E. and F. de N. previously sent to the aforesaid D. to view whether the infirmity for which the aforesaid B. in our court &c. has essoined himself against the aforesaid A. in a suit of land in N. be languor &c. or not &c., as above in the first original writ. Likewise if one or two (as above said) have not died nor become debilitated, but by chance from some necessary cause have transferred themselves out of the county, so that the others from the failure of so-and-so cannot make a view or testify to it, then in the place of such persons let others be appointed to make the view, and then let it be said in the place of C. and D., viewers of the illness for which &c., do thou appoint other knights, and those knights f. 355. together with such &c. as above, up to the clause "to "wit;" or let them send a respondent sufficient by himself, and then let there be added at the end the reason, wherefore those first sent could not view the sick man from the failure of C. and D., and let there be said at the end of the writ thus: And whereof the

tra coram justiciariis nostris talibus dixerunt q̃ prædicti C. et D. non fuerunt in p̃tibus illis, & p̃ defectu eorū nō potuerunt visum facere de p̃dicto B., et dic prædictis militibus q̃ sint corā p̃fatis justiciariis &c. simul cum p̃dictis E. et F. ad prædictum terminum ad testificandum visum suum, & quem diem ei posuerint, et si forte vicecomes cōtra formam brevis elegerit tales, qui nō fuerint p̃sentes et extra comitatū, tunc dicatur in fine, et tu ipse sis ibi auditurus judicium tuū, ad hoc q̃ p̃dictos C. et D. qui absentes fuerint & extra comitatū elegisti ad videndū, desicut p̃sentes misisse debuisti, et ita q̃ loquela illa p̃ hoc cepit tantā dilationē, & habeas ibi hoc b̃re & nomina militum quos de novo miseris. Teste &c. Si autē contingat q̃ omnes moriātur antequā viderint, vel cū viderint anteq̃m testificentur, tūc de novo mittātur alii. Item si ad primū diē nec milites venerīt, nec essoniati, nec vicecomes miserit breve, offerēte se liti petente, quia nescitur quid actū sit, vel quia forte nihil actū est, de novo p̃cipiatur vicecomiti q̃ mittat quatuor milites, et ipse sit ibi auditurus judiciū suū, q̃ primū breve nō misit &c. Si autē ad primū diē nō venerint milites, nec vicecomes misit breve, & essoniatus venerit primo die, & petens, tūc p̃cedit inter eos loquela, nisi forte sit q̃ petens objicere velit tenenti q̃ tenēs sine licentia surrexerit, vel sine visu militū, vel si p̃ visum militū surrexerit et petens se tenuerit in defaltam, dixerit q̃ alii

aforesaid E. and F. in our court before so-and-so our justiciaries have said that the aforesaid C. and D. were not in those parts, and from their failure they could not make a view of the aforesaid B., and say to the aforesaid knights that they present themselves before our aforesaid justiciaries &c. together with the aforesaid E. and F. at the aforesaid term to testify to their view and as to what day they have assigned to him, and if by chance the viscount contrary to the form of the writ has chosen those who were not present and were outside the county, then let it be said at the end, and do thou be there to hear judgment against thyself, on this point, that you have chosen as viewers the aforesaid C. and D. who were absent and outside the county, whereas you ought to have sent those who were present, and so that this trial has through this cause undergone so much delay, and do thou produce there this writ and the names of the knights whom you have sent afresh. Witness &c. But if it should happen that they all die before they have viewed, or after they have viewed, before they have testified, then let others be sent afresh. Likewise if on the first day neither the knights have come nor the essoinees, nor the sheriff has sent the writ, upon the claimant presenting himself to join issue, because it is unknown what has been done, or because by chance nothing has been done, let it be enjoined afresh to the viscount, that he send four knights, and that he himself attend to hear judgment against himself, because he has not sent the writ &c. But if on the first day the knights have not come nor the viscount has sent the writ, and the essoinee has come on the first day and the claimant, then the trial proceeds between them, unless by chance the claimant wishes to object to the tenant that he has left his bed without leave, or without the view of the knights, or if through the view of the knights he has risen from his bed and the claimant has placed himself in default, or shall have said that other

milites viderūt eum qm ad ipsum missi fuerunt, omnes, vel quidā ex illis: vel q surrexerit p visum aliorū, quā p visum militū, s. liberorū hominū, vel p visum militū, & similiter p visum liberorū hominū, qui forte in ipso visu faciēdo assūpti fuerunt p imperitiā ad vidēdum cum militibus: ut de term̃ S. M. añ regni regis H. ix. incipiente x. in com̃ Warr. de Rogero Levelande petēte, et Richardo de Gloc. tenēte, et essoniato, & ubi assumptus fuit serviens regis p quarto milite. Et cū petens ita se tenuerit ad defaltā, oportebit inquirere veritatē. Si autē objecerit petens essoniato, q sine licētia surrexerit, si de hoc cōstiterit, poterit tenēs amittere p defaltā, quia post essoniū de malo lecti redditū nō potest essoniatus surgere sine licētia, nec si licentiā petat, dabitur ei nisi ex causa, et infra certū tēpus, et ultra tēpus nō, nisi tantum de voluntate et cōsensu petētis. Causa enim esse poterit q cûm cōvaluerit de infirmitate, et nōdum visus est, p fraudē & malitiā petētis forte, qui supprimit brevę et negligēter psequitur, vel p negligētiā vicecomitis, qui forte nō mittit milites, sicut ei p̃ceptum est, vel p defectu militum qui visum nō faciunt, et in quibus casibus si essoniatus cōvaluerit de infirmitate, et nō dum visus fuerit, habebit licētiā surgēdi in defectum prædictorum. Et quòd licentia surgendi dari debeat essoniato qui visus fuerit legitimè per quatuor milites sive languorem adjudicaverint, sive malum transiens, donec venerint et languorem sive malum trāsiens testī-

knights than those who were sent to him, have viewed him, all or some of them; or that he has risen from his bed through the view of others rather than through the view of knights, that is, of free men, or through the view of knights and in like manner through the view of free men, who by chance in making the said view have been assumed through inexperience to make a view together with the knights, as in St. Michael's term in the ninth and tenth years of the reign of king Henry, in the county of Warwick, concerning Roger Lavelande the claimant, and Richard of Gloucester the tenant and the essoinee, and where a serjeant of the king had been assumed in the place of the fourth knight. And when the claimant has so placed himself in default, it will be incumbent to inquire the truth. But if the claimant has objected to the essoinee that he has risen from his bed without leave, if this has been established, the tenant may lose by default, because after an essoin of bed-sickness has been returned the essoinee may not rise from his bed without leave, nor if he asks for leave, will it be granted to him without a cause and within a certain time, and beyond the time not so, except with the will and consent of the claimant. For a cause may be that when he is convalescent from his illness, and has been not yet viewed, through the fraud and malice of the claimant by chance who suppresses the writ and prosecutes negligently, or through the negligence of the viscount, who by chance does not send knights as he has been enjoined, or from the failure of the knights, who have not made a view, and in which cases if the esssoinee has become convalescent from his illness, and has not been yet viewed, he will have leave to rise from his bed in default of the aforesaid persons, and that leave to rise from his bed ought to be granted to the essoinee, who has been lawfully viewed by the four knights, whether they have adjudged it to be languor or a passing illness, until they have come and have ad-

f. 355 b. caverint: habetis de terñ S. T. anno regis H. xiv. in coñ Norf. de priore de Longa Villa, et de terñ S. P. circa medium rotuli, quia ibi dicitur, q̃ si quis se essoniaverit de malo lecti et milites visum fecerunt de eo, sed tamē nō venerunt ad testificandū, nec petens sequatur versus eos, habebit essoniatus licētiam surgendi in defectu petentis, sive languor adjudicatus fuerit sive nō, & alibi in multis locis. Si autē cùm visus fuerit, et petens negligens fuerit q̃ sequi noluerit versus milites q̃ sint ad testificādum sive lāguorem adjudicaverint sive malū trāsiens, cùm adhuc sit loquela integra in curia, si licentiā petat surgendi, ꝑpter malitiā ipsius petentis obtinebit licentiā, nō obstante eo q̃ dicitur in ipsa petitione licentiæ, q̃ nōdum visus est, quia non multum operatur videre, nisi visus sit testatus, sed cùm visus factus fuerit & testatus, sed tamen nullus dies petenti datus apud Turrim, ante diem datum bene possit dari licentia surgendi, secundū quosdā, cùm petens apud Turrim diem nō receperit. Cùm autē diem receperit, jam desinit esse loquela in curia, donec aliàs per constabularium Turris post annum et diem iterū ad curiā remittatur, et sic obtinebit essoniatus de malo lecti licentiam surgendi usq̃ ad diē datū apud Turrim, post tempus vero illud nunquam licentiā obtinebit cōtra voluntatē ipsius petentis. Si autē ad hoc assensum p̃stiterit, & languidus cōvaluerit, et licētiam petierit surgēdi, cum cōsensu petentis obtinebit, ita q̃ ad certū diem cōveniant tenens & petens, ut suo tra-

judged it to be languor or a passing illness, you have a case in Holy Trinity term in the fourteenth year of king Henry in the county of Norfolk, concerning the prior of Longa Villa, and in Easter Term about the middle of the roll, because it is there said, that if any one has essoined himself for bed-sickness and the knights have had a view of him, but have not come to testify to it, nor does the claimant sue against them, the essoinee shall have leave to rise from his bed in the default of the claimant whether languor has been adjudged or not, and elsewhere in many places. But if when he has been viewed, and the claimant has been negligent from being unwilling to sue against the knights that they should be present to testify whether they have adjudged languor or a transient illness, since the trial is still entire in the court, if he asks for leave to rise from his bed, on account of the malice of the said claimant he shall obtain leave, notwithstanding that it is said in the said petition for leave, that he has not yet been viewed, for it does not much import to view him, if the view has not been testified, but when the view has been made and testified, but nevertheless no day has been appointed to the claimant at the Tower, leave to rise from his bed may well be granted before any day is appointed, according to some, since the claimant has not obtained a day to be granted to him at the Tower. But when he has had a day granted to him, the cause then ceases to be in the court, until it is otherwise remitted by the constable of the Tower to the court after a year and a day, and so the essoinee for bed-sickness shall obtain leave to rise from his bed up to the day granted to him at the Tower, but after that time he shall never obtain leave without the consent of the said claimant. But if he has given his consent to this, and the invalid has become convalescent, and has asked for leave to rise from his bed, he shall obtain leave with the consent of the claimant, so that the tenant and the claimant shall agree on a certain f. 355 b.

mite ꝑcedat loquela. Sed quid si, ante visum factū et testificatū, ꝑpter iter justitiariorū facta fuerit publica declamatio, q̄ omnes loquelæ quæ atterminatæ fuerūt corā justiciariis de bāco, & nō terminatæ remaneāt sine die, cū adhuc loquela inter petentē et essoniatū integra sit in bāco, bene poterit essoniatus sine licētia surgere ꝑpter talē declamationē. Si autē visus factus fuerit & testatus, & dies datus apud Turrim ptibus ulteriùs, nō possit essoniatus surgere, nec cum licentia nec sine, quia loquela non fuit in banco die declamationis factæ.

6. Qualiter petenda sit licentia surgendi.

Vidēdum erit qualiter licentia surgēdi peti debeat, & sciendū q̄ ad petendā licētiā surgēdi debet essoniatus mittere qm voluerit qui dicat, q̄ talis qui essoniavit de malo lecti convaluit de infirmitate sua, et petit licētiam surgendi, et sic irrotulabitur corā justiciariis, qui illius loquelæ habuerīt cognitionē. Talis qui se essoniat de malo lecti versus talē de placito terræ in tali cōm̄ mādavit per talē, q̄ cōvaluit de infirmitate sua, & q̄ nōdum visus est, et petit licentiā surgēdi, et habet, et dicatur nūtio q̄ scire faciat essoniato, q̄ statim & sine mora veniat ad curiā, et ibi dicetur ei q̄ observet diē suū, et ideo dicetur ei q̄ statim veniat: ne cū petens inveniat eum vagantē, ignorans sibi datā esse licentiā, ipsum ceperit et in prisona detinuerit, q̄ si fecerit, succurritur essoniato per tale breve.

day, so that the cause may proceed in its due course. But what if, before a view has been made and testified, on account of the *iter* of the justiciaries a public proclamation has been made, that all the causes which have been set down before the justiciaries of the Bench and not terminated shall be *remanets* without a day, when the trial between the claimant and the essoinee is still entire in the Bench, the essoinee may well rise from his bed without leave on account of such a proclamation. But if a view has been made and testified and a day further granted at the Tower to the parties, the essoinee cannot rise from his bed, neither with leave nor without, because the cause was not in the Bench on the day of the proclamation being made.

6. How leave to rise from bed is to be asked for.

We must see therefore how leave to rise from his bed ought to be asked for, and it is to be known that the essoinee ought to send for the purpose of asking for leave to rise from his bed some one whom he may choose, who shall say that so-and-so who has essoined himself for bed-sickness is convalescent from his infirmity, and he asks for leave to rise from his bed, and it shall be thus enrolled before the justiciaries, who have had cognisance of the said cause. So-and-so who essoins himself for bed-sickness against so-and-so in a suit for land in such a county has sent word by such a person that he has got well of his sickness and that he has not yet been viewed, and he begs leave to rise from his bed and he has leave, and let it be said to the messenger that he make it known to the essoinee that he should come forthwith and without delay to the court, and it shall be there said to him that he should observe his day, and accordingly it shall be said to him that he should forthwith come, lest when the claimant finds him at large, ignorant that leave has been granted to him, he should seize him and detain him in prison, which if he should do, aid is afforded to the essoinee by a writ of this character.

7. Breve, si post licentiam petitam et obientam arrestatus fuerit per adversarium.

f 356.

Rex vic. salutē. Si talis fecerit te securū &c. sūmoneas tales &c. quòd sint corā justiciariis &c. ad talē terminū, ad respondendū tali, quare cōtra pacē nostrā ceperunt ipsum, et ipsum captū in prisona detinet, in domo ejusdē talis, apud talē locū, occasione placiti quod est in curia nostra corā justiciariis nostris &c. inter ipsum talē petentē & eundem talē tenentem, de tanta terra cum pertinentiis in tali villa, unde idem talis in curia nostra &c. essoniavit se de malo lecti versus eundem talē petentem, & unde iidem justiciarii nostri dederunt eidē licentiam surgendi per defaltā ipsius talis petentis, eo quòd de ipso visum fieri non fecit, ut idem B. dicit. Et interim ipsum B. deliberari facias, nisi ex aliqua alia causa captus fuerit quare secundū legem terræ deliberari non debeat, & habeas ibi hoc breve. Teste &c. Si in curia baronum vel alterius dñi in placito de recto denegetur licētia surgendi essoniato, vel petens malitiosè supprimat breve ne essoniatus videatur, tunc fiat seneschallo curiæ breve dñi regis in hac forma.

8. Si in curia baronis vel alterius denegetur licentia surgendi, dominus rex licentiam dabit in defectu taliam.

Rex tali seneschallo salutē. Ostensum est nobis ex parte A. q cùm B. in curia tua vel talis dñi tui peteret tantū terræ versus ipsum A. per breve nostrum de recto, & idem A. essoniasset se de malo lecti versus eundē B. extra feodū dñi tui, ita q tu non potuisti eum facere videri, nec idē B. sibi perquisivit, ut deberet, q idem A. secundū consuetudinē regni nostri videretur per iv. milites, imò malitiosè ipsum detinuit per lōgum tempus inclusum, & prædictus A. mitteret ad te ad p̃dictā curiam, & peteret licentiā sibi dari

7. A writ, if after having asked for and obtained leave he has been arrested by his adversary.

The king to the viscount greeting. If so-and-so has given you surety &c. summon such persons &c. that they be present before the justiciaries &c. at such a term to make answer to so-and-so, wherefore against our peace they have seized him and detain him after seizure in prison, in the house of the said so-and-so, at such a place, on occasion of a cause which is in our court before our justiciaries and between so-and-so the said tenant and so-and-so the said claimant, concerning so much land with its appurtenances in such a vill, whereof the said so-and-so has essoined himself in our court &c. for bed-sickness against the said claimant, and whereupon our said justiciaries have granted to the said so-and-so leave to rise from his bed in the default of the said claimant, on the ground that he had not caused a view to be made of him, as the said B. avers And in the meanwhile cause the said B. to be set free, unless he has been seized for some other cause, wherefore he ought not in accordance with the law of the land to be set free, and produce there this writ. Witness &c. If in a court of a baron or of some other lord in a plea of right leave to rise from his bed has been denied to an essoinee, or the claimant maliciously suppresses the writ, lest the essoinee should be viewed, then let a writ of the lord the king issue to the steward of the court in this form. f. 356.

8. If in the court of a baron or of another person there be denied leave to get up, the lord the king shall grant leave in default of such persons.

The king to such steward greeting. It has been shown to us on the part of A., that when B. in your court or in the court of your lord claimed so much land against the said A. by our writ of right, and the said A. had essoined himself for bed-sickness against the said B. outside the fee of your lord, so that you could not cause him to be viewed, nor did the said B. request, as he ought to have done, that the said A. should be viewed according to the custom of our realm by four knights, nay has detained him maliciously for a long time locked up, and the aforesaid A. has sent to you at the aforesaid court, and has requested leave to be granted to him to rise from his

surgendi & comparendi in eadem curia tua, ad respondendū eidē B. de eodē placito secundū legem & consuetudinē regni nostri, tu ei in eadem curia tua licentiā surgendi denegasti, & quia in denegatione[1] p̃dicto A. manifeste injuriatū est, ei in defectu tui ipsi[2] licētiam surgendi dedimus, ad respōdendū p̃dicto A. de p̃dicta terra secundū legē & cōsuetudinē regni nostri, & hoc tibi & p̃fatæ curiæ significamus. T. &c. Et p hoc videri poterit q̃ dominus curiæ & ballivus dare possunt licētiam surgendi essoniato, & si talis, multo fortius vicecomes & comitatus.

## Cap. XI.

De officio quatuor militum in visu faciendo. De essoniis, cum missi venerint ad locum ubi essoniatus jacere debet.

Quatuor milites legitimè missi post multas dilationes factas, vel statim infra primum diem veniunt ad locū ubi essoniatus jacuerit, vel jacere debuerit, ad videndū &c. & tūc aut inveniūt eum aut non inveniunt. Si autē ipsum omnino nō invenerint, & hoc omnes ad diē datū simul testati fuerint, tunc ipse qui essoniari debet, aut p̃sens est in curia aut nō est p̃sens. Si autem p̃sens non fuerit, tunc capiatur terra in manū dñi regis, vel per magnum cape, vel per parvum cape, secundum quod essonium factum fuerit antequàm tenens in curia comparuerit vel post, & secundum hoc procedatur contra ipsum ad defaltam, & secundum quod inferiùs dicetur plenius de defaltis. Si autem præsens fuerit, et essonium omnino dedixerit, tunc refert utrum omnino essonium factum fuerit ante apparitionem in curia, vel post. Si autem ante, bene potest defendere inprimis summonitionem & sursisam, & quòd nunquàm summonitus fuit. Item utrum essoniatus de malo veniendi, an de malo lecti, ut supradictum est de sum-

[1] " denegatione illius licentiæ " prædicto A.," MS. Rawl. C. 160.

[2] " tui ipsius," MS. id.

bed and to appear in your said court to make answer to the said B. concerning the said cause according to the law and custom of our realm, you have in your said court denied to him leave to rise from his bed, and because in such denial manifest injustice has been done to the aforesaid A., we have granted to him in your default leave to rise from his bed to make answer to the aforesaid A. concerning the aforesaid land according to the law and custom of our realm, and this we signify to you and to the said court. Witness, &c. And by this it may be seen that the lord of the court and the bailiff may grant to the essoinee leave to rise from his bed, and if such a person, much more the viscount and the county court.

## Chapter XI.

1. Of the office of the four knights in making a view. Of essoins when those sent have come to the place where the essoinee ought to be lying.

The four knights, who have been lawfully sent, after many delays have taken place, or forthwith within the first day, come to the place where the essoinee lies, or ought to lie, to view &c., and then they either find him there or they do not find him there. But if they have not found him there at all, and all have together testified to this on the day appointed, then he who ought to be essoined is either present in court or is not present. But if he be not present, then let his land be taken into the hand of the lord the king, either through a great *cape* or a little *cape*, according as the essoin has been made before the tenant has appeared in court or afterwards, and according thereto let proceedings be had against him for a default, and according to what will be said below concerning defaults. But if he be present, and has altogether denied the essoin, then it is of importance whether the essoin has been made before his appearance in court or after it. But if before, he may well contest in the first place the summons and the adjournment and that he had ever been summoned. Likewise whether he has been essoined for sickness on the way or for bed-sickness,

monitionibus. Si autem essonium factum fuerit post-
f. 356 b. quàm comparuerit in curia & diem habuerit, diem datū nō poterit dedicere cōtra recordū curiæ. Et unde si postea dedixerit essoniū de malo veniēdi post diē datum in curia, cōcedit ꝑ cōsequens defaltā esse factā, et sic amittet seysinā ꝑ judicium ꝓpter defaltam, et multo fortius si dixerit[1] utrumq̃ essoniū tam de malo veniēdi, qm de malo lecti. Item veniunt milites ad vidēdum & inveniunt eum vagantē ꝑ curiā, et per rura, et tunc ad eorum testificationē fiat ut in ꝓximo supra. Item veniunt milites ad vidēdum, & inveniūt eū in lecto sicut decet taliter essoniatū, decalceatū, et sine braccis, & decinctū, vel forte nudum ꝙ plus est, cùm fuerit interrogatus, aut confitetur se esse essoniatū, aut omninò dedicit essoniū. Si autē essoniū dedixerit, tunc ad eorum testificationē fiat ut supra. Si autē essoniū cōfiteatur, tunc diligēter inquirant milites de qualitate infirmitatis, et de ejus circūstantiis, & utrum latens & intrinseca, vel in aperto et extrinseca, ut inde respōdere possint si forte fuerint requisiti, & secundum ꝙ viderint et judicaverint, dabunt ei malum transiens vel languorē. Si autē adjudicaverint ei malum trāsiens, forte in p̃sentia petētis dabunt ei diē certum in brevi cōp̃hensum, ꝙ tunc veniat vel sufficientē ꝑ se mittat respōsalē. Ad q̃m diē si milites venerint, et petēs et tenens, ꝓcedat loquela debito modo. Si autē petens & tenēs cōparuerint, et milites tātum unus vel duo, vel tres et nō quartus, vel forte nullus, si petens cōfiteatur visum rite esse factū, sufficit ejus testimoniū et ꝑ hoc

[1] " si dedixerit," MS. Rawl. C.

as above said concerning summonses. But if an essoin has been made after he has appeared in court and has had a day, he cannot deny the appointment of a day against the record of the court. And hence, if afterwards he has denied the essoin for sickness on the way after a day appointed in court, he concedes as a consequence that he has made default, and so he shall lose seysine by a judgment on account of his default, and much more so, if he has denied both essoins for sickness by the way and for bed-sickness. Likewise the knights come and they find him wandering about his court and his grounds, and then upon their testification let it be done as in the passage immediately preceding. Likewise the knights come to view him, and they find him in bed as becomes a person so essoined without his shoes and without his breeches and ungirt, or by chance naked which is more, when he has been interrogated he either confesses that he has been essoined or he altogether denies the essoin. But if he has denied the essoin, then upon their testification let it be done as above. But if he confesses the essoin, then let the knights make diligent inquiry as to the quality of his illness, and concerning its circumstances, and whether it is latent and internal, or open and external, that they may answer thereupon, if by chance they should be required, and according to what they have seen and judged let them grant to him either a transient illness or languor. But if they have adjudged to him a transient illness, they shall by chance in the presence of the claimant assign to him a certain day comprised in the writ, that he should then come or send a sufficient person to answer for him. At which day, if the knights have come and the claimant and the tenant, let the trial proceed in due manner. But if the claimant and the tenant have appeared, and only one or two knights or three and not the fourth, or perhaps none of them, if the claimant admits that the view has been duly made, his testimony is sufficient, and thereby f. 356 b.

nō multū operatur testificatio militum. Itē si petens venerit ad cōmunē diē, et visores nō, et cognoverit q essoniatus de malo lecti visus fuerit certo die, & q visores dederint ei lāguorē et diē apud Turrim Lond in unū annum et unum diē à die visus sui. Itē dies dabitur petenti ꝑpter suā ꝑtestationē apud Turrim, et se essoniatus tūc nō venerit, tūc revertatur ad judicium, et ꝑcedatur cōtra milites q veniant ad testificādū, & si venerit forte essoniatus, ꝑcedatur in placito principali, & de hac materia inveniri poterit de term̃ P. añ regis H. xiv. in com̃ Nott. et Linc. de Wv. thesaurario[1] Eborum et Wilhelmo de Camera et Letitia uxore ejus. Si autē ad diē illū venerint milites, et testificati fuerint visum, & petēte se offerēte liti nō veniat tenēs, expectato quarto die capiatur terra in manū dñi regis ꝑ defaltā, per ꝑvum cape, quia nō poterit tenens essoniū dedicere cōtra recordū militū, sive in curia cōparuerint sive nō. Si autē milites cōparuerint et tenens, et petens nō, tunc offerente se liti tenente recedet quarto die tenens quietus de brevi illo. Itē si milites cōparuerint in prima die, & petens nō, nec tenēs, sed in crastino uterq̃, vel tertio die uterq̃, vel quarto die uterq̃, cùm pares sint ꝑtes hinc inde quoad defaltā, nec sit quod aliquis eorum alterius possit imputare defectui, cōpēsetur defalta cum defalta, & ꝑcedat loquela, quia paria delicta mutua cōpensatione tolluntur. Si autem impares sint in defaltis, q si unus cōparuerit in

[1] "Wilhelmo thesaurario," MS. Rawl. C. 160.

the testification of the knights is not of much importance. Likewise if the claimant has come to the common day and the viewers not, and he has acknowledged that the essoinee for bed-sickness has been viewed on a certain day and that the viewers have assigned languor to him and a day at the Tower of London for a year and a day after the day of their view. Likewise a day shall be granted to the claimant on account of his protestation at the Tower, and if the essoinee has then not come, then let a return be made to the judgment, and let proceedings be had against the knights, that they should come to testify, and if the essoinee has by chance come, let proceedings be had in the principal suit: and concerning this matter a case will be found in Easter term in the fourteenth year of king Henry in the counties of Nottingham and Lincoln, concerning Wv. the treasurer of York and William de Camera and Letitia his wife. But if before that day the knights have come and have testified their view, and upon the claimant being present to join issue the tenant does not come, after the fourth day has been awaited let the land be taken into the hand of the lord the king through default by a little *cape*, because the tenant cannot deny the essoin against the record of the knights, whether they have appeared in the court or not. But if the knights have appeared and the tenant, but the claimant not so, then upon the tenant offering himself to join issue the tenant shall retire on the fourth day quit from that writ. Likewise if the knights have appeared on the first day, and the claimant not, nor the tenant, but both of them on the morrow, or both on the third day, or both on the fourth day, since the parties on either side are on a par as regards their default, and there is nothing which one of them can impute to the other by way of failure, let the default be compensated by the default, and let the trial proceed, because like offences are got rid of by mutual compensation. But if they are unequal in their defaults, because one has appeared

primo die, & alius in crastino, tertio, vel quarto die, procedatur ad defaltā secundum quod inferius dicetur de defaltis.

2. Cum milites venerint ad testificandum languorem. f. 357.

Item milites,[1] cùm visum fecerint, examinata infirmitate adjudicant essoniato languorē, & dabunt ei diem à die visus sui in unum annum & unum diem apud Turrim London, quòd tunc sit ibi inde respōsurus vel sufficientē p̄ se mittat responsalem, et ad diem in brevi cōtentū veniant corā justiciariis & testātur q̄ viderūt eum essoniatū tali die, & q̄ dederunt ei diē à die visus sui in unum annum & unū diē apud Turrim Lond, quo casu si forte milites discordes fuerint in die dato, iterum mittantur ad vidēdum, & ad dandum certum diem, & iterū ad certificandum visum. Si autē cōcordes fuerint in die dato, diligēter examinentur à justiciariis utrū dies datus à militibus rationabilis sit & legitimus vel non, ut si forte annus fuerit bissextilis, et quo casu si illegitimus fuerit dies, facta examinatione mittantur iterū ad lāguidū, ut dent ei diē legitimū secundū cōsilium justiciariorū, et iterū veniāt & testētur. Sed sive infirmitas sit lāguor sive nō, quare nō possunt milites capere attornatum, ut p̄ attornatū p̄cedet loquela, sicut fieri poterit si post annū et diē venire nō possit, potest mittere respōsalē. Respōdeo q̄ nō possunt, quia ad hoc nō sunt missi, et ideo nullam habēt potestatē etiā si essoniatus hoc vellet, nec essoniatus ad hoc arctari poterit q̄ faciat attornatum nisi velit. Et si justiciarii nō examinaverint, erit hoc eis

[1] "Item si milites," MS. Rawl. C. 160.

on the first day and the other on the morrow or on the third day or on the fourth day, let proceedings be had for a default according to what will be explained below on the subject of defaults.

2. When the knights have come to testify to languor. f. 357.

Likewise if the knights, when they have made a view, after an examination of the illness adjudge languor to the essoinee, and shall grant to him a day from the day of their view for a year and a day at the Tower of London, that he be there in order to answer or that he should send a sufficient person to answer for him, and on the day contained in the writ let them come before the justiciaries and let them testify that they have seen the said essoinee on such a day, and that they have granted to him a day from the day of their view for a year and a day at the Tower of London, in which case if by chance the knights are at discord as to the day granted, let them be sent a second time to view, and to grant a certain day, and to certify a second time their view. But if they are in accord upon the day granted, let them be diligently examined by the justiciaries whether the day granted by the knights is a reasonable day and a lawful day or not, as if by chance the year should be Leap Year, and in which case if the day shall be unlawful, after an examination has been made let them be sent a second time to the languid person, that they may grant to him a lawful day according to the advice of the justiciaries, and let them come again and testify. But whether the illness be a languor or not, why cannot the knights accept an attorney, so that the trial may proceed through an attorney, as may be done, if after a year and a day he cannot come, he may send a person to answer for him. I answer that they cannot do so, because they are not sent for that purpose, and therefore they have no power even if the essoinee should wish it, nor can the essoinee be constrained to this, that he should appoint an attorney unless he wishes it. And if the justiciaries have not examined into it,

imputandū si essoniatus surrexerit die illegitimo sibi ꝑ milites dato, militibus vero non, ꝑpter simplicitatē & imperitiā suam, essoniato nō, quia obtēperat judicatis. Si autē justiciarii cùm examinaverint, iterum miserint, & milites nō viderint, nec petens versus milites fuerit ꝑsecutus, tunc nec justiciariis imputari poterit, nec essoniato, sed militibus tātū, & petēti. Si autem judex examinaverit, & miserit, & milites missi viderint, & diē dederint, tunc si essoniatus tardiùs venerit, vel si forte erraverit essoniatus in die suscipiendo, quia malè intellexit diē suum, hoc sibi imputare debet, cùm quatuor milites inde habent recordū. Et ꝙ recordum habeāt ꝑbatur, cùm sint quasi justiciarii in hoc casu, nec cōtra assertionem eorum admittitur aliqua testificatio in cōtrarium, cûm petens se tenuerit ad defaltā, ex respōso W. de Ralegh & G. de Segrave facto Richardo Duket, qui expetiit eorum cōsiliū in hoc casu. Vel si maturiùs venerit ꝙm deberet, hoc sibi poterit imputari cùm ipse solus sit in culpa, licet aliquando actum fuerit in contrarium, ubi essoniatus obtemperat judicatis, & ꝑpter errorē militum in expressione diei, dānum sentiat, cùm nō sit in culpa, ut si in die dando dicāt essoniato.

3. Qualiter dandus sit dies et sub quibus verbis.

Damus tibi diē à die isto visus tui in unum annum & unum diē, hoc sufficit. Si autē diē expresserint, sic dicendo: damus tibi diē à die isto & ita ꝙ tali die cōpareas apud Turrim, si diem dederint legitimum in utroque casu erit eis obtemperandum, scilicet ꝙ ad diē expressum veniat apud Turrim, & erit talis dies esso-

it will have to be imputed to them, if the essoinee has risen from his bed on an unlawful day assigned to him by the knights, but not to the knights, on account of their simplicity and inexperience, not to the essoinee, because he obeys what is adjudged. But if the justiciaries when they have examined into it, have sent a second time, and the knights have not made a view, and the claimant has not sued against the knights, then it cannot be imputed to the justiciaries, nor to the essoinee, but to the knights alone, and to the claimant. But if the judge has examined into it, and has sent them, and the knights, who have been sent, have viewed and granted a day, then if the essoinee has come later, or if by chance the essoinee has erred in selecting a day because he has badly understood the day appointed to him, he ought to impute this to himself, since the four knights have a record thereof. And that they have a record is proved, since they are as it were justiciaries in this case, nor is any testification to the contrary admissible against their assertion, when the claimant has put himself in default, [as appears] from the reply of William de Ralegh and Gilbert de Segrave made to Richard Duket, who requested advice from them in this case. Or if he has come earlier than he ought, this may be imputed to him, since he alone is in fault, although it has sometimes been done to the contrary, where the essoinee obeys what has been adjudged, and on account of an error of the knights in their expression of the day suffers damage, since he is not in fault, as if in granting a day they should say to the essoinee:

3. How a day is to be granted and in what words.

We grant to you a day from this day of your view for a year and a day, this is sufficient. But if they have expressed the day, in saying thus: we grant to you a day from this day, and so that on the said day you should appear at the Tower, if they have granted a lawful day in either case they must be obeyed, to wit, that on the express day he should come to the Tower,

niati legitimus. Si autem in diei expressione erraverint milites, nō est necesse essoniato q̄ ipse erret, quia p̄ hoc posset esse in defalta p̄pter errorem militum, quāvis ipse nō esset in culpa. Et ideo cōpareat ad diem legitimum p̄pter verba generalia, p̄ quæ datur ei dies à die visus sui ad unum annum & unum diem, & expressio diei habeatur pro nulla. Sed quid si essoniatus obtemperaverit militibus errantibus, de gratia & consilio curiæ poterit ei subveniri. Cùm autem venerint coram justiciariis ad testificandum languorem,
f. 357 b. oportet quòd omnes veniant simul (ut prædictum est) ad testificandum, nisi ita sit q̄ petens præsens sit, & concedat visum factum legitimè & diem datum. Quo casu sufficit testificatio duorum vel triū, cum testificatione ipsius petentis, & sic fiat irrotulatio, C. D. E. F. quatuor milites missi ad talem, qui se essoniavit de malo lecti versus talem de placito terræ, veniunt & testificātur q̄ viderunt eum tali die, & dederunt ei languorem ex certa causa p̄pter talem infirmitatem, scilicet, si super hoc fuerint requisiti, & etiam dederūt ei diem à tali festo in unum annum & unum diem, vel à tali die ante tale festum vel post, vel tertio vel quarto die kalendas Aprilis, vel quarto kalendas, vel quarto idus in unū annum sine expressione et unum diem, et sufficit, vel cum expressione secūdum q̄ supradictum est. Et quo casu, facta sic testificatione, dabitur idem dies petenti si præsens fuerit, vel per essoniatorem suum si fuerit essoniatus. Et eodem modo participibus si præsentes fuerint, & sic erit tota

and such day shall be the legitimate day for the essoinee. But if the knights have made an error in the expression of the day, it is not necessary for the essoinee to make the same error, because he may thereby be in default on account of the error of the knights, although he be not himself in fault. And accordingly let him appear on the legitimate day on account of the general words, whereby there is granted to him a day from the day of his view up to one year and one day, and let the expression of a day be held to be null. But if the essoinee has obeyed the knights in their error, by the grace and upon the advice of the court he may have succour afforded to him. But when they have come before the justiciaries to testify to languor, it is incumbent that they should all come together (as above said) to testify, f. 357 b. unless it be that the plaintiff is present and that he admits that a view has been made legitimately and a day granted. In which case the testimony of two or of three is sufficient with the testimony of the plaintiff himself, and let the enrolment be thus: C. D. E. F., four knights sent to so-and-so, who has essoined himself for bed-sickness against so-and-so in a suit for land, come and testify that they saw him on a certain day, and granted him languor on account of a certain infirmity, to wit, if they have been required to speak upon this matter, and they have granted to him a day from such a festival up to a year and a day, or from such a day before such a festival, or after, or on the third or the fourth day before the kalends of April, or on the fourth before the kalends, or on the fourth before the ides for a year without expression and a day, and it is sufficient, or with expression according to what has been said above. And in which case, upon the testification having been thus made, the same day shall be granted to the plaintiff, if he be present, or through his essoiner, if he has been essoined. And in the same manner to parceners, if they be present, and thus the whole cause will

loquela in suspenso usq̃ ad annū & diem, & sic desinet loquela esse in judicio, & in curia, donec post annū & diem p constabularium à Turri iterum ad curiam remittatur, nec iterum revocari poterit ad curiam à justiciariis aliquo casu, sine utriusq̃ partis voluntate. Si autem participes in testificatione languoris forte præsentes nō extiterint, vel cùm essoniati fuerint, forte essoniū non jacuerit, quia priûs se essoniavit[1] (offerente se liti petente quarto die) ꝑcedatur cōtra eos ad defaltā, sicut infra dicetur de defaltis, cùm sint ꝑticipes, & quia res petita patitur divisionē, licet ab initio nō fuerit divisa. Et idē erit si fuerit divisa inter cohæredes. Amittere enim poterunt participes per defaltam sine participibus, quāvis sine ꝑticipibus non teneantur respōdere. Si autē vir & uxor implacitentur, qui simul & in solidum tenent unicam rem, cùm sint quasi unum corpus, quamvis diversæ animæ & nō ꝑticipes, quia res inter eos non patitur divisionem, cùm unus eorū essoniatus fuerit de malo lecti, & alter defaltam fecerit, ꝑcedi poterit statim ad defaltam contra absentem, sed ad judicium ꝑcedi non possit ante p̃sentiam utriusq̃. Suspēditur igitur judiciū quousq̃ essoniatus iterū in judicio & in curia cōparuerit, quia unius ipsorū defalta utriq̃ erit damnosa. Item esto q̃ petens p̃sens non fuerit die quo fit testificatio, nec per se, nec ꝑ essoniatorem ut diē suū recipiat, nec primo die nec secundo, nec tertio, nec quarto, nec ulterius, sufficit tamen si aliquo die infra annū & diē. Sed quid si post annū & diem petat tenens judicium de

[1] "se essoniaverint," MS. Rawl. C. 160.

be in suspense for a year and a day, and so the cause will cease to be in judgment and before the court until after a year and a day it be remitted again to the court by the constable at the Tower, nor can it be recalled to the court by the justiciaries in any case without the willingness of both parties. But if the parceners have not been present at the testification of languor, but when they have been essoined by chance the essoin has not held good, because they have essoined themselves previously (the claimant presenting himself to join issue on the fourth day) let proceedings be taken against them for a default, as shall be said below concerning defaults, when there are parceners, and because the thing claimed admits of division, although it has not been from the beginning divided. And the same shall be done, if it has been divided amongst coheirs. For parceners may lose by default without their parceners, although they are not bound to answer without their parceners. But if a man and his wife are impleaded, who hold together and in a lump a single thing, since they are as it were one body, although different souls and not parceners, because the thing does not admit of division between them, when one of them has been essoined for bed-sickness and the other has made default, proceedings may be had forthwith for a default against the absent one, but cannot go on to judgment before the presence of both. The judgment therefore is suspended until the one who has been essoined has appeared again in judgment and in the court, because the default of one of them will be damaging to both. Likewise let it be that the plaintiff has not been present on the day, on which the testification is made, neither by himself, nor by an essoiner, to have a day appointed to him, neither on the first nor on the second nor on the third nor on the fourth day nor on a further day, it suffices however if on some day within a year and a day. But if after a year and a day the tenant claims

defalta petentis, nihil capiat per defaltam, facta compensatione ut prædictum est.

## Cap. XII.

1. Qualiter essoniatus custodire debeat languorem et qualiter se tenere. f. 358.

Qualiter autem essoniatus custodire debeat languorem videndum, & sciendum quòd (secundum quòd supradictum est) decinctus, & sine braccis, & discalceatus se tenere debet in lecto. Alicubi tamen poterit indui vestimentis si voluerit: non debet exire cameram vel domum in qua jacuerit publicè, nec vagari per curiam suam in cōspectu populi, nec exire de curia ut vagat [1] per rura, vel longius incedat, ne à petente interceptus seysinam suam amittat per defaltam, quia si petens scit eum extra curiam suam, vel in curia sua forte ipsum invenerit, immittere poterit in eum manus, cum hac tamen discretione.

2. Si essoniatus inventus fuerit vagans, qualiter debet arrestari.

Debet tamen petēs secum assumere si fieri possit servientem dñi regis, simul cum probis & legalibus hominibus vicinis, & cum clamore ipsum arrestare, ita quòd nullam faciat ei violentiam. Et quo casu, habeat serviens domini regis recordum simul cum testimonio legalium & proborum hominum. Si autem tales secum statim non habuerit, veniat petens cum suis & essoniatū arrestet cum utesio et clamore, ut ad hoc conveniant probi homines vicini, ut si opus fuerit, testificari possunt quid viderunt. Mittere etiā debet ꝑpter coronatores, & servientem domini regis, ut simul cum probis hominibus testificari possint qualiter fuerit interceptus, quorum recordo stabitur, donec essoniatus per manifestas ꝑbationes docuerit contrarium. Poterit enim

[1] "ut vaget," MS. Rawl. C. 160.

judgment from the default of the claimant, let him take nothing through the default, compensation having been made as aforesaid.

## Chapter XII.

1. In what way an essoinee ought to observe languor and in what way to keep himself. f. 358.

But we must see in what way an essoinee ought to observe languor, and it is to be known (as said above) he ought to keep himself in bed ungirt and without his breeches and without his shoes. But he may occasionally put on his clothes if he wishes; he ought not, however, to go publicly out of the chamber or out of the house in which he lies, nor wander about his court in the sight of the people, nor go out of his court to wander about the fields or to take a longer walk, lest upon being intercepted by the claimant he should lose his seysine by default, because if the claimant knows that he is outside his court, or has found him by chance in his court, he may lay hands upon him, with this discretion however:

2. If an essoinee has been found at large, how he may be arrested.

The claimant ought to take with himself, if possible, a king's serjeant, together with some honest and loyal neighbours, and with a cry arrest him, so that he do no violence to him. And in which case let the king's serjeant have a record together with the testimony of the loyal and honest men. But if he cannot have forthwith such persons to accompany him, let the claimant come with his own men and arrest the essoinee with hue and cry, that the honest men of the neighbourhood may assemble thereupon, and if it should be necessary, may testify what they have seen. But he ought to send besides the coroners and a serjeant of the lord the king, that they may be able to testify with the honest men, in what manner he was intercepted, by whose record the matter shall stand, until the essoinee has shown the contrary by manifest proofs. For the serjeant of

serviens dñi regis simul cum testimonio ꝑborum hominum testificari qualiter essoniatum, & in quo loco arrestatum invenerit, sed utrum sponte ibi venerit, vel contra voluntatē adductus, testificari nō possunt. Poterit enim essoniatus docere contrariū sic, & dicere quòd cùm esset tali die in domo sua tali, apud talē locum & in lecto suo sicut ille cui fuit languor adjudicatus, & in pace domini regis, venit ibi ipse talis petens, & nequiter & in felonia extraxit eum à domo sua, & à lecto suo, & in roberia abstulit ei tantum, contra pacem dñi regis, & sic offert &c. Et quo casu, ꝑcedendum erit in modum appellati, & terminabitur negotium per duellum, vel per inquisitionem, & secundum quod judicium fecerit ꝑ uno vel pro alio, amittet unus eorum imperpetuum. Tenens, quia stulte surrexerit, vel petens, quia malitiose essoniatum extraxerit, et eadē ratione qua lucrari voluerit, eadē ꝑpter malitiam amittat. Cûm autem quis essoniatus ita per legem terræ arrestatus fuerit, & non ꝑ malitiā, si petens se tenuerit ad defaltam, & judiciū petierit de defalta, firmiter se teneat ad defaltam, ne defaltæ tacitè renunciat ꝑ consensum. Tacitè enim renunciare poterit ita: si diem amoris ceperit cum tenente, sive datus fuerit dies ꝑce tenentis, vel prece petentis, vel ꝑce utriusq̃. Dabitur enim dies sic. Dies datus est tali petenti, & tali tenenti, de placito terræ usque talem diem prece partium. Et ex quo petens per hoc innuit quòd placitum sit inter eos, & sic videtur tacitè renunciasse defaltæ, & videtur placitum redintegratum quod fuit ex

the lord the king may testify together with the testimony of the honest men in what manner and in what place he found the essoinee arrested, but whether he came there spontaneously or was brought thither against his will they cannot testify. For the essoinee may show the contrary thus, and say that when he was on such a day in his own house at such a place and in his own bed, as a person who has been adjudged to have a languor, and in the peace of the lord the king, the said claimant himself came and wickedly and feloniously dragged him out of his house and out of his bed, and in robbery took so much from him against the peace of the king, and so he offers &c. And in which case proceedings will have to be taken after the manner of a criminal charge, and the business will be determined by a duel or by an inquest, and according as judgment shall have been for the one or for the other, one of them shall lose in perpetuity. The tenant, because he has foolishly left his bed, or the claimant because he has maliciously dragged out of bed an essoinee, and in the same way in which he wished to gain, let him in the same way lose on account of his malice. But when a person essoined has been thus arrested by the law of the land and not by malice, if the claimant has kept himself to a default and has requested judgment for a default, let him hold fast to a default, lest he should renounce it tacitly by consenting. For he can tacitly renounce in this manner: if he has taken a day of love together with the tenant, or if such a day has been given with the assent of the tenant or at the prayer of the claimant or with the assent of both parties. For a day shall be given in this manner. A day has been given to so-and-so the claimant and to so-and-so the tenant, concerning a suit for land up to such a day at the prayer of the parties. And since the claimant hereby implies that there is a suit between them, and so he seems to have tacitly renounced a default, and the suit seems to have

parte tenentis desertum. Eodem modo videtur tacite renunciasse tenens defaltæ, si sibi perquisiverit de amovenda loquela ab uno judicio ad alium per pone. Continetur enim ibi, pone coram justiciariis, &c. Loquelam, quæ est in comitatu vel coram nobis vel coram talibus justiciariis, per hoc enim quod dicitur in impetratione
f. 358 b. propria loquela quæ est, videtur per hoc innuere quòd loquela sit redintegrata ut prius, & sic esse poterit in pluribus causibus consimilibus. Et si ad hoc autem agat petens, quòd judicium transferatur de defalta ab uno juditio ad aliud, vel hoc sit factum judiciū[1] et nō petentis, vel q̄ dies datur de audiendo judicio suo de defalta, p̄pter difficultatē judicii, & ita q̄ ibi sit factū justiciarii & nō p̄tis, aliud erit, quia per hoc nō renūciat petens defaltæ tacitè neq̄ expressè. Cùm autem sic arrestatus fuerit tenens essoniatus cum testimonio sufficienti, ut p̄dictum est, non erit ulteriùs ducendus ab aliquo, nec ad comitatum nec ad castrum, nec alibi, sed statim dimittendus abire liberè quo voluerit, qui cùm dimissus fuerit abire, ubicunq̄ divertit iterū ad lectum vel alibi, statim ad querelā petentis sum̄oneatur venire ad curiam, ubi loquela priùs fuit, ad audiendum judiciū suū de defalta, & quare surrexerit postq̄m languor fuerit adjudicatus ei p̄ tale b̄re de judicio. In sum̄a vero notandū, q̄ postq̄m quis essoniatus fuerit de malo lecti, postq̄m in curia dñi regis cōparuerit q̄ essoniū dedicere nō possit, nō possit impunè, q̄ nō sit in defalta, surgere sine visu legitimo

[1] "judicis," MS. Rawl. C. 160.

been renewed, which had been abandoned on the part of the tenant. In the same way the tenant seems to have renounced tacitly a default, if he has made application on his own behalf to remove the cause for argument from one judgment to another by a *pone*. For it is contained therein,—Put before the justiciaries &c. the cause which is in the county court, or before us, or before certain justiciaries, for inasmuch as in the suing out a cause which is existing is spoken of, he seems thereby to imply that the cause has been renewed as before, and so it may be in several similar cases. But if the claimant works for this, that the judgment be transferred concerning the default from one judgment to another, or if this be the act of the judge and not of the claimant, or that a day is given for hearing his judgment concerning the default, on account of the difficulty of the judgment, and so that it be the act of the justiciary and not of the party, it will be different, for the claimant does not thereby renounce a default either tacitly or expressly. But when the tenant essoinee has been thus arrested with a sufficient body of witnesses, as aforesaid, he will not have to be further conducted by any one, neither to the county court nor to the castle, nor elsewhere, but he is forthwith to be dismissed to go away freely wherever he may wish, who when he has been dismissed to go away, wherever he lodges himself whether again to go to bed or elsewhere, let him be forthwith summoned on the complaint of the plaintiff to come to the court, where the cause has first been spoken to, to hear his judgment concerning the default and wherefore he has risen from his bed after languor had been adjudged to him, by such a writ for judgment. But in sum it is to be noted, that after a person has been essoined for bed-sickness after he has appeared in the court of the lord the king so that he can not gainsay his essoin, he cannot rise from his bed with impunity so as not to be in default without a view has been legiti- f. 358 b.

facto, s. p tales qui visum facere possunt, ut supra, vel sine licētia: & generaliter licētiā habere poterit, sive visus fuerit sive nō, & sive languor ei adjudicatus fuerit sive nō, quousq̃ visus legitimè testatus fuerit, & ita q̃ petens diē receperit apud Turrim Lond. Et extunc nulla dari poterit licentia surgēdi, quia justiciarii jurisdictionē nō habent, nec reverti poterit loquela iterū ad judicium, nisi per officium constabularii. Cōtingit quandoq̃ q̃ ille qui à lāguore surrexit, non est inventus in loco in quo se essoniavit nec extra ubi possit arrestari, quò casu, ad querelam petētis fiat breve vicecomiti q̃ assumptis secum quatuor militibus, vel quibusdam ex illis qui eum viderunt, in ꝑpria persona sua accedat ad locum, in quo ꝑdictus essoniatus jacuisse debuit, & si ipsum in languore suo invenerit, sicut fuit ei adjudicatus vel nō, & secundū q̃ eum invenerit vel nō, fiat breve vicecomiti sub tali forma.

3. Breve, si essoniatus surrexerit sine licentia, quod milites mittantur ad ipsum videndum, si ita surrexerit vel non post languorem ei adjudicatam.

Rex vicecomiti salutem. Ostensum est nobis ex parte A. q̃ cùm B. in curia nostra apud West. vel coram justiciariis nostris itinerātibus vel in comitatu tali essoniasset se de malo lecti versus talē de placito terræ apud talē locū in comitatu tali. Et ibidē lāguor esset adjudicatus ei ꝑ quatuor milites per ꝑceptum nostrū ad ipsum videndū transmissos, idem B. infra languorem suum contra consuetudinē regni nostri surrexit, & à domo sua in qua languidus jacuisse debuit, exivit, & à ꝑtibus illis recessit, et se transtulit ibi vel ad alium comitatū. Et ideo tibi ꝑcipimus q̃ statim visis literis istis omni occasione &c., assumptis tecū ꝑdictis quatuor militibus, vel duobus ex illis, si omnes habere

mately made, that is, through such persons who may make a view, as above, or without a license: and generally he may have a license, whether he has been viewed or not, and whether languor has been adjudged to him or not, as long as the view has been legitimately testified, and so that the claimant has received a day at the Tower of London. And from that time no license to rise from his bed can be given, because the justiciaries have not jurisdiction, nor can the cause be restored again to the court for judgment, except through the office of the constable. It happens sometimes that he who has got up after a languor, is not found in the place where he essoined himself, nor outside it in a place where he can be arrested, in which case at the complaint of the plaintiff let a writ go to the viscount that he having associated with himself four knights or some of those who have viewed him, should go in his own person to the place, where the essoinee aforesaid ought to have lain, and if he shall find him in his languor, whether it has been adjudged to him or not, and according as he has found him or not, let a writ in this form go to the viscount.

A writ, if the essoinee has got up without licence, that knights be sent to view him, if he has so got up or not after a languor has been adjudge to him.

The king to the viscount greeting. It has been shown to us on the part of A. that when B. in our court at Westminster, or before our justiciaries itinerant, or in such a county court, has essoined himself for bed-sickness against so-and-so in a suit for land at such a place in such a county, and a languor was there adjudged to him by four knights sent to view him through our precept, the said B. within the time of his languor against the custom of our realm has got up from his bed, and has gone out of his house, in which he ought to have lain languid, and has withdrawn from those parts, and has transferred himself there or to another county. And accordingly we enjoin you that immediately upon seeing these letters on every occasion &c., having associated with you four knights, or two of them, if you cannot

non possis, in ꝑpria persona tua accedas apud talem locū, & videas si idem B. ibi sit in lecto & in lāguore suo sicut ei fuit adjudicatus, vel nō. Et si ibi eū inveneris, hoc scire facias justiciariis nr̃is apud West. per literas tuas sigillatas. Et si ibi inventus nō fuerit, tunc venire facias prædictos milites, qui ibi tecum interfuerint, corā præfatis justiciariis nostris tali die ad certificandum inde justiciarios nr̃os. Et interim ꝑ legales & discretos homines, tam ballivos tuos ꝙm ꝑ alios, insidiari facias eidē B. si redierit de ꝑtibus talibus vel nō. Et si redierit, & invētus fuerit extra talē locū ubi languor fuit ei adjudicatus, tūc facias eum arrestari, ita ꝙ habeas corpus ejus coram præfatis justiciariis nr̃is ad talē terminum ad respondendū eidem[1] quare &c. vel ad audiendū recordum vel judiciū suū de loquela quæ fuit coram eisdē justiciariis nostris inter p̃dictos A. & B. de tanto terræ cum pertinentiis in tali villa. Et unde idem talis essoniavit se de malo lecti versus predictum talem, & ita ꝙ languor ei fuit adjudicatus, & sine licētia surrexerit à lāguore, ut idem talis dicit, & habeas ibi &c. Teste &c.: & ita possunt istæ ultimæ clausulæ vel adjungi brevi de inquisitionibus,[2] vel fieri per se.

f. 359.

## Cap. XIII.

1. Qualiter essoniatus venire debet ad Turrim London. et quando, vel mittere responsalem.

In fine anni post languorem, cùm essoniatus convaluerit de languore, videndū erit qualiter venire debeat apud Turrim, & quando, vel mittere responsalem, eo forte ꝙ jam languor versus sit in morbum sonticū, & incurabilem, ꝙ venire non possit per se. Itē quando debeat surgere à lecto ægritudinis, & qualiter, & per

[1] "eidem A.," MS. Rawl. C. 160. | [2] "inquisitione," MS. id.

have all, you should go in your own person to such a place, and see if the said B. is there in bed, and in his languor, as was adjudged to him, or not. And if you shall find him there, make this known to our justiciaries at Westminster by your sealed letters. And if he has not been found there, then cause the aforesaid knights, who were present there with you, to come before our said justiciaries on such a day in order to certify our said justiciaries. And meanwhile cause certain loyal and discreet persons, as well your bailiffs and others, to lie in wait for the said B., if he shall return to those parts or not. And if he shall have returned and has been found outside such place in which a languor was adjudged to him, then cause him to be arrested, so that you present his body before our aforesaid justiciaries at such a term to answer to said A. wherefore &c., or to f. 359. hear the record or his own judgment in the cause which was before our said justiciaries between the said A. and B. concerning so much land with its appurtenances in such a vill. And whereon the said so-and-so has essoined himself for bed sickness against so-and-so aforesaid, and so that a languor was adjudged to him, and he has risen up from his languor without a licence, as so-and-so says, and have there present &c. Witness &c.: and so these short little clauses may be either added to a writ for an inquest or be inserted by themselves.

## Chapter XIII.

1. In what way an essoinee ought to come to the Tower of London or to send a responsible person.

At the end of the year after the languor, when the essoinee has got well of his languor, it is to be seen how he ought to come to the Tower of London, and when, or else to send a responsible person, on the grounds perhaps that the languor has already turned into a fatal or an incurable malady, so that he cannot come in person. Likewise when he ought to rise from his bed of sickness, and in what manner, and by what days-journeys he

quas dietas venire debeat ad Turrim. Et sciendū q̄ cùm essoniatus à languore convaluerit & in propria persona venire possit, primò debet cōputare dietas rationabiles secundū q̄ plenè convaluerit, vel secundum quod per languorē extenuatus fuerit & debilitatus, ita q̄ commodè venire non possit. Sed postq̄m à lecto surrexerit, non moretur in domicilio suo ultra unam noctē, & sic inde p̄ficiscatur per rationabiles dietas ad Turrim, ita q̄ per viam nusq̄m moram faciat ultra unam noctem, & q̄ sit apud Turrim ultimo die anni naturalis, qui dicitur dies excrescens, & hora cōgrua placitandi.

2. Qualiter sit annus bissextilis.

Sed videndū erit qualiter dies ille sit accipiendus tempore bissextili, p̄pter duos dies qui sub eodē signo & eadem litera cōputantur, quorū unus (qui dicitur dies excrescēs) determinat & finit tempus quatuor annorū p̃cedentium, & in eo computabilis est inter dies ejusdē tēporis p̃teriti qui sunt mille & quadrīgenti, & faciūt quatuor annos minores, & quibus adjicitur unus dies qui colligitur ex quatuor quadrīgētis, ut faciat p̃dictos quatuor annos plenos & majores, & dicitur dies excrescens, & cōputandus erit inter tēpora & dies p̃dictorū quatuor annorū præcedentiū, & qui dicitur dies legitimus cōparendi quolibet anno apud Turrim. Et eodē modo in anno bissextili sicut in aliis tribus annis p̃cedentibus. Est etiam alius dies sub eadē litera qui est caput & principium aliorū quatuor annorū subsequentiū, qui si cōputandus esset infra tempora prædictorū quatuor annorum præcedentium, ratione alicujus quadrantis sive quartæ, sublato de medio & non computato die excrescente, sic esset dies comparendi apud Turrim in sexagesimo septimo die, q̄ esse non debet, cùm ille dies excresens cōputabilis sit infra tempora

ought to come to the Tower. And it is to be known when the essoinee has got well of his languor and can come in his own person, he ought to compute reasonable days' journeys according as he has got thoroughly well, or according as he has become thin and weak by the languor, so that he cannot conveniently come. But after he has risen from his bed, let him not delay in his domicile beyond a single night, and so let him proceed by reasonable days' journeys to the Tower, so as not to delay on the road anywhere longer than a single night, and that he be at the Tower on the last day of the natural year, which is called the excrescent day, and at the usual hour of hearing suits.

2. In what manner the year becomes bissextile.

But it is to be seen in what manner that day is to be accepted in a bissextile time on account of two days, which are computed under the same sign and under the same letter, of which one (which is called the excrescent day) determines and finishes the time of the four preceding years, and therein is computable amongst the days of the said past time, which are one thousand and four hundred, and make four minor years, and to which is added one day which is collected from the four four hundred days in order to make the aforesaid four years full and major, and it is called the excrescent day, and will have to be computed amongst the times and the days of the aforesaid four preceding years, and which is called a legitimate day of appearing in every year at the Tower. And in the same way in a bissextile year as in the other three preceding years. There is also another day under the same letter, which is the head and commencement of the other four years following, which if it were to be computed within the times of the four years preceding by reason of a certain quarter or fourth part, the excrescent day having been taken out of the midst, and not being computed, the day of appearing at the Tower would thus be on the sixty-seventh day, which ought not to be, since the excrescent day is computable

quatuor annorū p̃cedentiū, ratione illius quadrantis sive quartæ, & sic in anno bissextili erit ille dies legitimus cōparendi. Et ita quòd in anno bissextili plures dies non contineantur qm trecenti & sexaginta sex, sicut in aliis annis non bissextilibus. Et ita uterq̃ dies sub
f. 359 b. eadem litera sit comprehensus, quia sic subductus[1] sicut in anno bissextili sicut in anno minori terminat tempus quatuor annorum præcedentium, & principium dat tempus quatuor annorum subsequentium, & ita eodem die desinit annus præcedens propter sex horas, & incipit eodem die annus sequens propter octodecim horas, quarū unus[2] terminat & etiam idem principium dat, & computabiles sunt & non sunt computabiles, diversis tamen respectibus. Ille vero dies excrescens, qui non est computabilis ea ratione propter necessitatem ad vitandum illud inconveniens, ne festum Natalis Domini celebretur in estate & Nativitas Sancti Johannis Baptistæ in hyeme, quod contingere posset infra quingentos vel sexcentos annos, & etiam ita contingeret intemperies hyemalis in signis estivalibus. Et ad majorem evidentiam aliquid dicamus de anno, scilicet quid sit annus, & quis dicatur major annus, & minor. Et ratio quare dies adjungatur anno minori. Annus est mora motus quo summus planeta pervolvat circulum. Annorum autem quidam sunt majores, quidam minores, secundum brevitatem vel productionem circulorum, & secundum velocitatem planetæ in suo circulo. Item annorum alius solaris, alius lunaris, alius artificialis, alius naturalis, alius usualis. Naturalis est illud spatium quo suum sol pervolvat circulum, & fit ex trecentis sexaginta & quinque diebus & uno quadrante sive quarta unus diei, scilicet ex sex horis. Hora au-

[1] "quia sic subductus," down to "octodecim horas," omitted MS. Rawl. C. 160.

[2] "quorum unus," MS. id.

within the times of the four years preceding by reason of the quarter or fourth part, and so in a bissextile year that day will be the legitimate day of appearing. And so that in a bissextile year there are not contained more than three hundred and sixty-six days, as in other years that are not bissextile; and so either day becomes f. 359 b. comprised under the same letter, because being thus subtracted as in the bissextile year, as in a minor year it terminates a time of four preceding years, and supplies a commencement of four years following, so on the same day the preceding year ceases by reason of the six hours, and the following year begins by reason of the eighteen hours, of which one terminates and the same also supplies a commencement, and they are computable and are not computable, in different respects however. But the excrescent day, which is not computable for this reason, for the sake of avoiding the inconvenience lest the festival of the Nativity of our Lord should be celebrated in the summer and the Nativity of St. John Baptist in the winter, which might happen within five hundred or six hundred years, and so that the climate of winter would occur in the summer signs. And for greater clearness let us say something concerning the year, to wit, what a year is, and what is called a greater and what a smaller year. And the reason why a day is added to a smaller year. A year is the delay of the motion with which the highest planet completes a circle. But some years are greater, some are smaller, according to the shortness or the prolongation of the circles, and according to the velocity of the planet in its circle. Likewise of years one is solar, another is lunar, another is artificial, another is natural, another is usual. A natural day is that space in which the sun completes its circle of revolution, and it consists of three hundred and sixty-five days and a quarter or a fourth part of one day, to wit, of six hours. But an

tem fit ex quadraginta momentis, & sic fit dies ex novem millibus & sexcentis momentis.[1] Usualis annus qui dicitur annus minor, stat ex trecentis sexaginta & quinque diebus, ubi ultimus dies non est legitimus comparendi secundum quosdam. Major vero constat ex trecentis sexagenta & sex diebus, ita ut minutæ neglectæ per tres annos præcedentes resumantur cum minutiis quarti anni ad perficiendum unum diem integrum, & iste dies sic excrescens appellatur bissextus, et annus in quo contingit dicitur bissextilis, & qui quidem omni tempore legitimus est ad cōparandum, scilicet in sexagesimo sexto die in anno bissextili, sicut in aliis annis, sed in sexagesimo septimo (sicut dicunt quidam, sed non bene ut videtur). Dicitur etiam bissextus eo quòd inscribitur sexto kalendas Martii, ubi duo dies computantur super unam literam, scilicet F., quia colligitur iste dies ex minutiis quatuor annorum. Et ne putet illum quis incipere in uno ánno & terminari in quarto anno, proponatur annus incipiens manè, ille terminabitur revoluto circulo anni in meridie, ubi incipiente secundo anno ille secundus dies terminabitur ad noctem eadem ratione, tertius ad mediam noctem, quartus ad auroram, ita quòd bissextus constat ex quatuor quartis simul sumptis, & ita computatur nox sequens cum die præcedente pro uno die artificiali. Si autem fiat computatio anni lunaris recte dicendo per literas è contrario, semper dies præcedit et nox subsequitur. Et ideo vice versa per talem computa-

[1] "constat ex ix. et lx. momen- "tis," MS. Rawl. C. 160, et MS. Regium 9. E. xv; "constat ex no- "vem centum et lx. momentis," MS. Crewe. See Introduction.

hour consists of forty moments, and so a day consists of nine thousand and six hundred moments.[1] The usual year is that which is called the smaller year, it consists of three hundred sixty and five days, where the last day is not a legitimate day of appearing according to some. But a greater year consists of three hundred and sixty-six days, so that the minutes neglected during the three preceding years be resumed with the minutes of the fourth year to make up one whole day, and this day thus excrescent is called *bissextus*, and the year in which it occurs is called *bissextilis*, and which is at all times legitimate for appearing, to wit, on the sixty-sixth day in the bissextile year, as in other years, but in the sixty-seventh (as some say, but not rightly as it seems). For the day is called *bissextus* because it is inserted in the sixth of the calends of March, where two days are computed under one letter F., because that day is made up of the minutes of four years. And lest any person should suppose it to begin in one year and to be terminated in the fourth year, let a year be proposed commencing in the morning, it will be ended upon a revolution of the circle of the year in the middle of the day, when at the commencement of the second year that second day will terminate at night in the same way, and the third day at midnight, and the fourth day in the morning, so that the day termed *bissextus* consists of four quarters taken together, and so the following night is computed with the preceding day as one artificial day. But if a computation be made of a lunar year, strictly speaking, through letters contrariwise, the day always precedes and the night follows. And therefore conversely through such a computation the natural

[1] This is evidently a misinterpretation of the numerals in the MS. which the editor of Tottell's text had before him, as the multiplication of the twenty-four hours of the artificial day by forty moments, the equivalent of one hour, results in a day of nine hundred and sixty moments, instead of nine thousand six hundred moments.

tionem incipiat dies naturalis in aurora, & terminetur vice versa (ut supra). Ex præcedentibus igitur manifestè liquet q in sexagesimo sexto die debeat essoniatus comparere apud Turrim & non maturiùs, ne sit in defalta eo q languorem rite non observaverit. Item non tardiùs qm in sexagesimo sexto die secundū eosdē ne sit in defalta, eo quòd diem suum sibi datum apud Turrim non observaverit. Igitur secure poterit comparere sexagesimo sexto die, scilicet primo post annum naturalem, qui sub se continet annū minorē usualem, & unū diem tam in anno bissextili qm aliis tribus annis p̃cedentibus, quia in hoc nō differunt in aliquo. Circulus vero anni usualis sive solaris fit ad modum et ad similitudinē colubri sine cauda, nec erit annus integer, nec capiti adjungi poterit corpus q est annus usualis et constat ex trecētis et sexaginta quinq̃ diebus, nisi adjungatur ei cauda. Cauda vero dici poterit sex horæ q̃ deficiunt, ut ex anno usuali qui sub se continet trecētos & sexaginta quinq̃ dies et sex horas, scilicet quartā p̃tem diei, fiat annus naturalis, qui sub se cōtinet annum usualem & unum diē ratione p̃dictarum sex horarum, & sic erit circulus anni naturalis ad modū & similitudinē colubri habētis caudā in ore, sicut videri poterit per lunarē computationem literarū & signorū, quibus dies anni signātur. Videamus igitur omne tēpus quatuor annorū, ut sciri possit qualiter quilibet annus naturalis incipiat per se, & qualiter terminetur. Incipit enim sub eodē signo, vel sub eadē litera, & sub eodē signo terminatur, quod dici poterit in ore colubri: ut si inceperit quis cōputare à litera B. facta cōputatione trecentorū et sexaginta quinq̃ dierū, f. 360.

day would begin in the morning and would be terminated conversely (as above). From that which precedes it is manifestly clear that the essoinee ought to appear at the Tower on the sixty-sixth day, and not sooner, lest he be in default, inasmuch as he has not f. 360.
observed duly his languor. Likewise not later than the sixty-sixth day according to the same persons, lest he be in default, inasmuch as he has not observed his day assigned to him at the Tower. He may therefore in security appear on the sixty-sixth day, to wit, the first day after the natural year, which contains under itself a minor usual year and one day as well in bissextile year as in the three other preceding years, because in this matter they do not differ in any respect. But the circle of the usual or solar year is made after the manner and after the likeness of a serpent without a tail, nor will the year be entire, nor can the body, which is an usual year and consists of three hundred and sixty-five days, be joined on to the head, unless a tail be joined on to it. But the six hours which are wanting may be called a tail, so that out of the usual year, which contains under itself three hundred and sixty-five days and six hours, to wit, the fourth part of a day, there results a natural year, which contains under itself an usual year and one day in respect of the aforesaid six hours, and so the circle of a natural year will be after the manner and after the likeness of a serpent having its tail in its mouth, as may be seen by a lunar computation of the letters and the signs by which the days of the years are marked. Let us see, therefore, all the time of the four years, that it may be known in what way each natural year begins by itself, and in what way it ends. For it begins under the same sign and with the same letter, and it ends under the same sign, which may be termed in the mouth of the serpent, as if one should have begun to compute from the letter B., after having made a computation of three hundred and sixty-five days,

et adjuncta una quarta, quia sumi debet de die contento sub signo B., efficientur annus & dies quæ dicūtur annus naturalis. Itē facta computatione anni secundi ꝑpter tres quartas quę adhuc remanēt de tempore futuro, iterū assumatur quædā quarta sub signo B., et erit secundus annus naturalis. Item cùm adhuc remaneant duæ quartæ, incipiat annus tertius naturalis sub eodē signo B., & fiat computatio ut supra ad hoc ꝙ fiat annus naturalis. Item cùm adhuc remaneat una quarta, incipiat annus naturalis sub eodem signo, et facta cōputatione terminetur in eodē ratione ejusdem quartæ. Et sic erunt eodē quarto anno bis sex horæ & exinde duo dies quales sub eodē signo B., unus scilicet incipiēs, & alius annū terminans, & ꝑpter illas bis sex horas dici posset annus bissextilis, & sic totū tēpus quatuor annorū continet sub se mille et quadringētos et unum diem, qui colligitur ex quatuor quartis quatuor aⁿorum præcedentiū, & terminat totū tempus quatuor annorum, et dicitur excrescens, et nihil sibi vendicat ex tēpore quatuor annorū usualiū subsequentiū. Ne igitur subsequatur inconveniens de ꝙuo supradictum est, remanente die excrescente de tempore præterito sub eadem litera B. sive F., de necessitate retrotrahitur primus dies quatuor annorū subsequentium, ut exinde fiat computatio totius temporis quatuor annorum subsequentium in forma supradicta, & sic de tempore in tēpus in infinitum. Observare debet igitur essoniatus diligenter annū et diē, ne maturiùs vel tardiùs compareat quàm deberet. Si autem die nō legitimo comparuerit, & petens eodem die, tenens erit

and after adding a fourth part of a day, because it ought to be taken from the day contained under the sign B., there will be effected a year and a day, which are called a natural year. Likewise upon a computation having been made of a second year, on account of the three quarters which still remain of future time, let a certain fourth be again assumed under the sign B., and there will be a second natural year. Likewise since there still remain two quarters, let a third natural year begin under the same sign B., and let a computation be made as above for the purpose of making a natural year. Likewise since there still remains a quarter of a day, let the natural year commence under the same sign, and upon a computation having been made let it end in the same sign by reason of the said fourth part. And so there will be in the said fourth year twice six hours and thereupon two days as under the sign B., to wit, one beginning and the other ending a year, and on account of those twice six (bis sex) hours the year may be called bissextile, and so the entire time of four years contains under itself one thousand and four hundred days and one day, which is collected from the four quarters of a day in the four preceding years and terminates the whole time of four years, and is termed excrescent, and claims for itself nothing out of the time of the four usual years following. Lest, therefore, the inconvenience, which has been mentioned above, should follow upon the excrescent day remaining from the time past under the same letter B. or F., of necessity the first day of the four following years is drawn back, so that thereupon a computation should proceed of the whole time of the four years following in the form abovementioned, and so from time to time without end. An essoinee ought therefore to observe diligently the year and a day, that he may not appear sooner or later than he ought to do. But if he has appeared on a day not the legitimate one and the claimant on the same day,

in defalta, facta protestatione et recordo cōstabularii. Si autē petens die legitimo comparuerit, et tenens
f. 360 b. maturius ut prædictū est, idem erit ut supra. Quia licet tenens defaltam fecerit, petens tamen diem suum observabit. Si autem petens die legitimo comparuerit & tenens in crastino, tenens erit in defalta, quia diem suum non observavit.

3. De apparitione essoniati

Si autem die legitimo nec petens nec tenens comparuerit, tunc uterquè facit defaltam, quia diem legitimum non observaverunt, & unde si ambo in crastino comparuerint fiat hinc inde compensatio defaltarum, quia paria delicta mutua compensatione tolluntur. Si autem unus in crastino & alius in die tertio vel quarto, licet ex toto non sint pares in delicto, tamen hinc inde erunt in defalta, & fiat cōpensatio ut supra. Item si unus illorum die legitimo comparuerit apud Turrim, et alius coram justiciariis in curia, ille qui in curia comparat[1] defaltam facit, quia nullum diem in curia habuit, sed apud Turrim. Et ideo licet magis sit apparere in curia quàm apud Turrim, non defenditur, cùm oporteat eum reverti ad judicium per eandem viam per quam divertit à judicio. Item esto q ambo compareant in curia die legitimo quo apud Turrim comparuisse debuerunt, fiat hinc inde compensatio defaltarum, secundum q supra paulum antedictum est. Cum autem ambo die legitimo apud Turrim comparuerint, aut comparet petens per seipsum, vel per attornatum, vel per essoniatorem, & tenens aut cōparet per seipsum, vel per responsalem, cùm per seipsum venire non possit.

[1] "comparet," MS. Rawl. C. 160.

the tenant will be in default, upon a protest having been made and a record by the constable. But if the claimant has appeared on the legitimate day and the tenant sooner as aforesaid, it will be the same as above. Because although the tenant has made a default, the claimant nevertheless shall observe his own day. But if the claimant has appeared on the legitimate day and the tenant on the morrow, the tenant will be in default, because he has not observed his own day. f. 360 b.

But if on the legitimate day neither the claimant nor the tenant has appeared, then each makes default, because they have not observed the legitimate day, and hence, if both should appear on the morrow, let there be made compensation on either side, because equal offences are taken away by mutual compensation. But if one should appear on the morrow and the other on the third or on the fourth day, although on the whole they are not equal in offence, nevertheless they will be on the one side and on the other side in default, and let compensation be made as above. Likewise if one of them has appeared on the legitimate day at the Tower, and the other before the justiciaries in court, he who has appeared in court makes default, because he has no day assigned to him in court, but at the Tower. And therefore, although it is more to appear in the court than at the Tower, it is not allowed, since he ought to return to judgment by the same way by which he turned aside from judgment. Likewise let it be that both should appear in court on the legitimate day on which they ought to have appeared at the Tower, let there be on the one and the other side a compensation of defaults according to what has been said a little above. But when both shall have appeared at the Tower on the legitimate day, either the claimant appears by himself or by an attorney, or by an essoiner, and the tenant appears either by himself or by an agent to answer on his behalf, when he cannot come in person. 3. Of the appearance of the essoiner.

4. De officio constabularii.

Qualiter vero venerit vel quo die, officium cōstabularii est omnia per ordinem irrotulare, recordum enim habet de iis quæ viderit, judicare tamen non poterit, quia apud Turrim non est judicium cûm ibi deficiat tertia pars judicii, scilicet judex & jurisdictio, habet enim constabularius recordum in hiis quæ sunt facti, & non in hiis quæ sunt judicii sive juris. Irrotulare enim debet sic, quòd talis qui se essoniavit de malo lecti versus talem in tali comitatu de placito terræ, venit tali die apud Turrim London, & optulit se versus talem petentē, & petens nō venit sed in crastino. Et dixit quòd ad legitimum diem venit et tenens non, & petiit judicium de defalta. Et è contrario si tenens dicat q ad legitimū diem venit & petens non, et tenens petit judicium de defalta, mittantur partes ad judicium in banco ut ibi judicetur de defalta. Eodē modo si petens se essoniaverit apud Turrim, & attornatus[1] suus, mittantur tenens & essoniator corā justiciariis ut ibi judicetur essonium. Sed videamus cui cōpetat essoniū apud Turrim. Et sciendū q nullum competit essonium tenenti qui se essoniavit de malo lecti, quia ex quo in judicio omnia habuit essonia sua tam de malo veniendi quàm de malo lecti, nullum habebit essonium antequàm iterum comparuerit in judicio. Judicium vero est coram justiciariis in banco & non apud Turrim: nullum essonium sequitur. Item videndum an petenti competat essonium vel ejus attornato apud Turrim, vel ad bancum, quo casu videndum erit cùm visus testatus fuerit coram justiciariis de banco, utrum diem habuerit per se, vel per essoniatorem suum, quia

[1] "vel attornatus suus," MS. Rawl. C. 160.

But in whatever manner he may have come and on whatever day, it is the office of the constable to enroll every thing in order, for he has a record of the things which he has seen, but he cannot judge, for at the Tower there is no judgment, since there is wanting there the third part of a judgment, namely, the judge and the jurisdiction, for the constable has a record in matters of fact, but not in matters of judgment or of law. For he ought to enroll in this manner, that so-and-so, who has essoined himself for bed-sickness against so-and-so in such a county court concerning a suit of land, came on such a day to the Tower of London and presented himself to join issue with so-and-so the plaintiff, and the plaintiff has not come, but on the morrow. And he has alleged that he came on the legitimate day and the defendant not so, and he has claimed judgment for a default. And on the contrary if the defendant says that he came on the legitimate day and the plaintiff not so, and the defendant claims judgment for a default, let the parties be sent to judgment in the Bench, that it may there be adjudicated upon the default. In the same manner if the plaintiff or his attorney has essoined himself at the Tower, let the defendant and his essoiner be sent before the justiciaries that the essoin be judged there. But let us see who is entitled to an essoin at the Tower. And it is to be known, that the defendant who has essoined himself for bed-sickness is not entitled to any essoin, because since he has had in judgment all his essoins as well for sickness on the way as for bed-sickness, he shall have no essoin before he has again appeared in judgment. But judgment is before the justiciaries in the Bench, and not at the Tower. No essoin follows. Likewise we must see whether the plaintiff or his attorney is entitled to an essoin at the Tower, or at the Bench, in which case it is to be seen when a view has been testified before the justiciaries of the Bench, whether he has had a day through himself or

4. Of the office of the constable.

sæpius se essoniare poterit coram justiciariis in banco, si sæpius cōparuerit, post quālibet apparitionē, si fortè milites visores plures fecerint defaltas antequam comparuerint ad testificādum. Et si p essoniatorē diē
f. 361. receperit in banco, nullū habebit essoniū apud Turrim, nō magis quā tenens antequā cōparuerit interim in curia, quia omnia essonia sua in judicio habuit coram justiciariis sicut ipse tenens. Itē nec essonium habebit iterum corā justiciariis in judicio, quia apparitionem apud Turrim nullum sequitur essonium, nec magis datur ei essoniū qm tenēti, quia si ei daretur, eadem ratione dari posset tenenti, q esse nō debet. Si autē p seipsum vel attornatū[1] diē receperit in bāco apud Turrim, unicū habebit essoniū, si voluerit, anteqm in judicio corā justiciariis cōparuerit. Et sine essonio bene potest cōparere apud Turrī, & in judicio si voluerit. Si autē apud Turrim se essoniaverit, ibi nō judicabitur essoniū, sed mittetur ad curiā[2] corā justiciariis judicandum. Et nihilominus si voluerit nō obstante essonio comparere poterit impunè corā justiciariis in judicio, & per essoniū factū apud Turrim salvabitur tempus medium, quousq̄ in judicio cōparuerit. Si autem apud Turrim cōparuerit, & diem receperit in banco per constabularium, bene poterit se essoniare coram justiciariis in judicio. Non tamen ex die sibi dato apud Turrim sed ex die prius recepto coram justiciariis in bāco. Cùm autē uterq̄, tam petens qm tenēs, psonaliter cōparuerint apud Turrim die legitimo, dabitur utriq̄ parti dies coram justiciariis in banco si tunc ibi fuerint residentes, vel si nō, tunc

[1] "per attornatum," MS. Rawl. C. 160.

[2] "mittetur ad judicium," MS. id.

through his essoiner, because he may repeatedly essoin himself before the justiciaries of the Bench, if he has repeatedly appeared, after each appearance, if by chance the knights, who are the viewers, have made several defaults before they have appeared to testify. And if he has received through an essoiner a day in the Bench, he shall have no essoin at the Tower, no more than the f. 361.
defendant, before he has appeared in court, because he has had all his essoins in judgment before the justiciaries just as the defendant. Likewise he shall not have again an essoin before the justiciaries in judgment, because no essoin follows his appearance at the Tower, nor is an essoin allowed to him any more than to the defendant, because if it were allowed to him, for the same reason it might be allowed to the defendant, which ought not to be. But if he has received in person or by his attorney a day in the Bench at the Tower, he shall have a single essoin, if he wishes, before he shall appear for judgment before the justiciaries. And he may well appear without an essoin at the Tower, and in judgment, if he wishes. But if he has essoined himself at the Tower, his essoin shall not be judged there, but it shall be sent to the court before the justiciaries to be judged. And nevertheless if he wishes, notwithstanding the essoin, he may appear with impunity before the justiciaries in judgment, and through the essoin made at the Tower the intermediate time will be saved, until he has appeared for judgment. But if he has appeared at the Tower and has received a day in the Bench through the constable, he may well essoin himself before the justiciaries at the judgment. Not however upon the day given to him at the Tower, but upon the day previously received by him before the justiciaries in the Bench. But when both the plaintiff as well as the defendant have personally appeared at the Tower on the legitimate day, there will be given to them both a day before the justiciaries in the Bench, if they shall then be there resident,

cùm redierint, si in brevi reversuri fuerint, vel post tempus. Non autem dabitur dies coram justiciariis itinerantibus, sive itinerâtes sint in eodē coñ, ubi terra fuerit quæ petitur, sive in alio, sed primo corā justiciariis de banco, si qui tunc fuerint residētes in banco, & alii itinerantes in comitatu, ubi terra fuerit quæ petitur. Et justiciarii de banco exinde dabunt diem corā justiciariis itinerantibus, ut sic per ordinē ꝓcedat judicium. Et ideo à Turri mittuntur partes in bācum ut loquela in eodem judicio finem accipiat, in quo sumpsit initium.

## Cap. XIV.

1. Cum visus fieri debeat vel factus fuerit, si visores non sunt legitimi, quid facere debet essoniatus.

Redeamus iterū ad visum quatuor visorū, & videamus quid sequatur, si visores legitimi nō sunt ad videndū, & per hoc visus illegitimus, de quibus supradictū est. Quo casu, si essoniatus per visum talium visorū surrexerit, ut si ei surrectionem dederint, erit in defalta, secundum q superius dictum est. Melius est igitur q se teneat in lecto, vel quòd licentiam petat surgendi, antequàm visus testatus fuerit per tales, quam si obtinuerit, & sic comparuerit, excusatur à defalta, non propter visum, cùm sit illegitimus, sed propter licentiam si forte petens visum calumniaverit & visores. Si autem non, tunc procedat loquela in utroque casu, ac si visus legitimè factus esset. Si autem essoniatus forte licentiam surgendi petere voluerit, tunc ad diem sibi datum per visores tales tutius

but if not, then when they have returned, if they are about to return shortly, or after some time. But a day shall not be assigned to them before the justiciaries itinerant, whether they be itinerant in the same county, in which the land which is claimed is situated, or in another county, but in the first place before the justiciaries in the Bench, if any be then resident in the Bench, and the others are itinerant in the county, where the land is, which is claimed. And the justiciaries in the Bench shall thereupon assign a day before the justiciaries itinerant, that the judgment may thus proceed in due order. And therefore the parties are sent from the Tower to the Bench, that the cause may receive its termination in the same court in which it had its commencement.

## Chapter XIV.

1. When the view ought to be made or has been made, if the viewers are not legitimate, what the essoinee ought to do.

Let us return to the view of the four viewers, and let us see what follows, if the viewers are not the legitimate persons to make the view, and thereby the view is illegitimate, concerning which we have spoken above. In which case, if the essoinee has got up from his bed through the view of such viewers, as if they have given him leave to get up, he will be in default, according to what has been said above. It is better therefore that he should keep himself in bed, or that he should request a licence to get up, before his view has been testified by the said viewers, which if he has obtained and has thus appeared, he is excused from default, not on account of the view, which has been illegitimate, but on account of the licence, if by chance the plaintiff has impeached the view and the viewers. But if not, then let the cause proceed in either case, as if the view had been legitimately made. But if by chance the essoinee has wished to apply for a licence to get up, then upon the day assigned to him by such viewers it will be safer for

f. 361 b. erit quòd mittat pro se responsalem. Et quo casu, si petens velit visum calumniare, iterum fiat visus legitimè, si primus sufficiens non fuerit. Si autem non, tunc ꝓcedat loquela inter petentem & responsalem. Si autem prædicti tales, qui ad visum faciendum sunt inutiles, languorem adjudicaverint essoniato, cùm visū testificati fuerint in ꝑsentia petentis, & petens contra visores nihil exceperit, sed diem receperit apud Turrim sine calumnia, licet visus ab initio fuerit illegitimus, efficitur legitimus per consensum petentis, & ita quòd ulteriùs nihil objicere potest cōtra visores, nec cōtra visum. Et idem erit si absens fuerit in testificatione visus, cùm ꝑsens esse debet, & hoc suæ debet imputare negligentiæ, & in quibus casibus necesse erit q tenens essoniatus se teneat ad languorem, & ulterius licentiā surgēdi nō habebit. Si autem visus (quāvis legitimus) nondū testatus fuerit forte infra annū & diē, licet languor adjudicatus, semper infra annū & post annū quandoq̄ poterit tenens habere licentiā surgendi, donec visus testatus fuerit. Et quamvis post annū & diē petens apud Turrim obtulerit se cōtra tenentē essoniatum, hoc tenenti non nocebit, quia nullus dies datus est ei in judicio apud Turrim. Et si forte cōstabularius mādaverit q̄ petens certo die venerit, & tenens essoniatus nō, si ad querelā petētis sum̄oneatur tenens q̄ sit apud Turrim ad respondendū corā justiciariis, quare diem sibi datū apud Turrim non serva-

him to send a person to answer on his behalf. And in which case, if the plaintiff wishes to impeach the view, let a view be made a second time legitimately, if the first has not been sufficient. But if not, then let the cause proceed between the plaintiff and the respondent on behalf of the defendant. But if the aforesaid persons, who have been useless to make a view, have adjudged languor to the essoinee, when they have testified their view in the presence of the plaintiff, and the plaintiff has made no exception against the viewers, but has received a day at the Tower without any impeachment of the viewers, although the view may have been illegitimate from the commencement, it is rendered legitimate through the consent of the plaintiff, and so that he can make no further objection against the viewers or against the view. And the same will happen, if he has been absent at the testification of the view, when he ought to be present, and this he ought to impute to his own negligence, and in which cases it will be necessary that the defendant essoinee should keep himself in languor, and he shall not have a licence any further to get up. But if the view (although legitimate) has not yet been testified by chance within a year and a day, although languor has been adjudged, the defendant may always within the year and after the year at any time have a licence to get up until the view has been testified. And although after a year and a day the plaintiff has presented himself at the Tower to join issue with the defendant essoinee, this shall not prejudice the defendant, because no day has been appointed to him at the Tower for judgment. And if by chance the constable has issued an order that the plaintiff should come on a certain day, and the defendant essoinee not so, if upon the complaint of the plaintiff the defendant be summoned that he should present himself at the Tower to answer before the justiciaries, wherefore he has not kept the day assigned to him at the Tower, if the

f. 361 b.

vit, si petens se tenuerit ad defaltā, respondere poterit tenens, q̄ visus non fuit legitimè factus, & perinde nō visus, & sic q̄ nec potuit nec debuit ibi cōparere, & sic oportebit q̄ hoc p̄ visores (cùm cōparuerint) terminetur. Item dicere poterit, q̄ nō necesse habuit ibi cōparere, quia tenens diem apud Turrim non habuit, cui deberet vel posset respondere, & sicut videtur, se defendere poterit à defalta.

2. Si languor vertatur in morbum incurabilem, quod essoniatus non poterit venire, tunc mittat responsalem.

Cùm autē p̄ tales (ut prædictū est) fuerit languor adjudicatus, & visus testatus sine calumnia, & dies datus petenti apud Turrim, tunc necesse erit essoniato q̄ se teneat ad languorē, & observet annū & diē apud Turrim, & q̄ in p̄pria p̄sona sua veniat (si possit) modo quo supradictū est, vel q̄ pro se sufficientē mittat responsalem, qui p̄ eo litem suscipiat & defendat. Et tunc aut mittit responsalē aut non mittit. Si autem nec venerit nec responsalem miserit, erit in defalta. Si autē responsalem miserit apud Turrim, qui sit ibi diem recepturus & in judicio cùm cōparuerit corā justiciariis responsurus, audietur ejus responsio quicunq̄ sit ille, dū tamē sit major. Et si forte nullū miserit, dū tñ sit aliquis apud Turrim qui dicat se esse missum & diem recipiat ac si in judicio ut responsalis respondeat, si de ejus responsione judicium faciēdū sit sicut de duello vadiando & de magna assisa sum̄onenda, vel de aliquo q̄ sit de substātia negotii & p̄ q̄ loquela debeat terminari, judicium illud debet poni in respectu

plaintiff has kept himself to the default, the defendant may answer, that the view has not been legitimately made, and is equivalent to no view at all, and so that he neither could nor ought to have appeared, and thus it will be necessary that this should be determined by the viewers (when they have appeared). Likewise he may say that he did not deem it necessary to appear there, because the defendant had not a day appointed to him at the Tower, to which he could or ought to have answered, and he will be able, as it seems, to defend himself from a default.

2. If a languor is turned into an incurable disease, so that the essoinee cannot come, then let him send a person to answer for him.

But when through such viewers a languor has been adjudged, as aforesaid, and the view has been testified without any impeachment, and a day has been given to the plaintiff at the Tower, then it will be necessary for the essoinee to keep himself to the languor, and let him observe the year and a day at the Tower, and that he come in his own person (if he can) in the manner as above said, or send a sufficient representative on his behalf, who can undertake and defend the lawsuit. And then he either sends or does not send a representative. But if he shall neither come himself nor send a representative, he will be in default. But if he shall send a representative to the Tower, who shall be present there in order to accept a day and in order to make answer for him in judgment when he has appeared before the justiciaries, the answer of him, whoever he may be, provided he be of full age, shall be heard. And if by chance he has sent no one, provided there be at the Tower some person, who will say that he has been sent, and who will accept a day as if he were answering as a representative in the judgment, if a judgment has to be made concerning his answer as concerning a wager of battle and concerning the summoning of a great assise, or concerning anything which is of the substance of the affair and which ought to be terminated by a trial, that judgment ought to be respited, until through four knights

quousq̃ per quatuor milites missos ad languidū sciatur, si talem miserit p̄ se responsalem, & si ratam habuerit responsionem quam idem talis p̄ eo fecerit: & quòd ita fieri debeat, p̄batur in rotulo de termino S. M. anno regis H. xv. incipiente xvi. in comitatu Salop. Breve de mittendo iv. milites ad languidum ad audiēdum &c. tale erit.

3. Breve de mittendo ad f. 362. languidum ut sciatur, si ratam habuerit responsionem quam responsalis pro eo fecit.

Rex vic. salutem. Mitte iv. legales milites de comitatu tuo apud talē locū ad A. qui se in curia nostra corā justiciariis vel corā nobis essoniavit de malo lecti versus B. de placito terræ ad audiendum si idē A. p̄ se misit C. corā p̃fatis justic. nostris corā nobis &c. ut respōsalem suū ad audiendū vel ad respondendū eidē B. de eadē terra, & si ratā habuerit respōsionē quā idem C. p̄ eo fecit in eodē placito, & similiter ad audiendum si velit eundē C. in p̃dicto placito attornare in p̃dicto loco suo ad lucrādum vel p̄dendū, et venire facias corā p̃fatis justic. nostris vel corā nobis &c. ad talē terminū p̃fatos quatuor milites ad testificandū ea quæ à p̃fato A. super p̃missis audierint. Et habeas ibi nomina militū & hoc breve. Teste &c. Qui ad diem venerint, audiatur eorum testificatio, si autē nō venerint, p̄cedatur cōtra eos ad defaltā quousq̄ cōparuerint, sicut p̄cessū est supra, cōtra quatuor milites missos ad languidum. Ille vero qui sic essoniatus est ratam habeat responsionē si voluerit, & cōcedat q̄ talē miserit respōsalē, & ita sub nomine ipsius respōsalis p̄cedere possit, & terminari loquela. Si autē ratam nō habuerit responsionē, adjudicabitur in defalta. Necesse est igitur ei q̄ ratam habeat responsalis responsionē,

sent to the languid man it may be known, whether he has sent such person to answer for him, and if he ratifies the answer, which the said person has made in his behalf, and that this should be so done is proved in the roll of St. Michael's term in the fifteenth and sixteenth years of king Henry in the county of Salop. A writ for sending four knights to a languid person to hear &c. will be of this tenor.

3. A writ to send to a languid person, that it may be known, if he ratifies the answer, which his representative has made on his behalf. f. 362.

The king to the viscount greeting. Send four loyal knights of your county to such a place to A., who has essoined himself in our court before our justiciaries or before us for bed-sickness against B. in a suit for land, in order to hear if the said A. has by himself sent C. to present himself before our said justiciaries or before us &c. as his representative to hear and to answer to the said B. concerning the said land, and if he has ratified the answer which the said C. has made on his behalf in the said suit, and in like manner to hear if he wishes to attourn the said C. in the aforesaid suit in his aforesaid place to gain or to lose, and cause to come before our aforesaid justiciaries or before us &c. at such a term the aforesaid four knights to testify those things which they shall have heard from the aforesaid A. concerning the premises. And have there the names of the knights and this writ. Witness &c. Who if they have come on the day, let their testification be heard, but if they have not come, let proceedings be taken against them for their default until they have appeared, just as proceedings have been taken above against the four knights sent to a languid person. But the person who has been thus essoined, let him ratify the answer made on his behalf (if he wishes), and let him admit that he sent such a representative, and thus the trial may proceed under the name of his representative and be terminated. But if he does not ratify the answer, he shall be adjudged in default. It is necessary, therefore, for him that he should ratify the answer of his representative

& cōcedat q talem miserat responsalē, & sic poterit nomine ipsius responsalis tota ꝓcedere loquela & terminari, & post quamlibet apparitionē cū dominus litis ratā habuerit responsionē suā, poterit se essoniare nomine ꝓprio de malo veniendi, sicut ac si esset in curia attornatus. Si autem ratam non habuerit responsionē, adjudicabitur in defalta. Oportet igitur de necessitate q illā ratā habeat, nihilominus tamen si in ꝓpria ꝑsona venire voluerit & respondere, bene poterit si voluerit, & tempus mediū & apparitio apud terminū salvabitur per ꝑsentem responsalē. Si autē milites forte non venerint ad diem sum̄onitionis, nec essoniatus responsalis, semper sequatur versus milites, & irrotuletur sic defalta militū. Talis qui se facit responsalē talis optulit se quarto die versus A. B. C. D. milites missos &c. et si poterit terminari negotium &c. Et notandū in fine. q si respōsalis apud Turrim cōparuerit maturiùs quā deberet, non nocebit languido, dum tamen responsalis cōparuit die legitimo. Si autem tardiùs, hoc nocebit essoniato. Si autē responsalis maturiùs se obtulerit quàm deberet, & essoniatus die legitimo, sive responsalis venerit die legitimo, sive non, tenens salvabitur à defalta sive responsalem advocaverit sive non. Si autem respōsalis venerit die legitimo, & essoniatus in crastino die, vel tertio, vel quarto die ꝓ responsalem, salvabitur tenens à defalta, ut paulo ante dictum est. Et circa responsalem multa sunt dicenda, licet ista ad præsens tempus dicta sufficiant.

and admit that he has sent the said representative, and so the whole trial may proceed and be terminated in the name of his representative, and after each appearance, since the lord of the suit has ratified his answer, he will be able to essoin himself in his own name for sickness on the way, just as if he was attourned in court. But if he has not ratified the answer, he will be adjudged to be in default. It is incumbent therefore of necessity that he should ratify it, nevertheless, however, if he has chosen to come in his own person and to make answer, he may well do so, if he wishes, and the intermediate time and the appearance at the term will be saved by the representative then present. But if by chance the knights have not come on the day of summons nor the essoined representative, let proceedings always follow against the knights, and let the default of the knights be thus enrolled. So-and-so who makes himself the representative of a certain person presented himself on the fourth day against A. B. C. D. the knights sent &c., and so the affair may be terminated. And it is to be noted at the end, that if a representative has appeared at the Tower sooner than he ought to have done, it will not prejudice the languid person, provided always that the representative has appeared on a legitimate day. But if he has appeared later than he ought to have done, this will hurt the essoinee. But if the representative has presented himself sooner than he ought to have done, and the essoinee on his legitimate day, whether the representative has come on a legitimate day or not, the defendant will be saved from a default whether he has avowed the representative or not. But if the representative has come on a legitimate day, and the essoinee on the morrow of it, or on the third or on the fourth day through a representative, the defendant will be saved from a default, as has been explained above. And concerning a representative many things are to be said, although these sayings for the present time are sufficient.

## Cap. XV.

1. Si plures sint participes tenentes unicum jus habentes qualiter procedendum in essonio de malo lecti. f. 362 b.

Dictū est supra si unus tenēs ꝑ se se essoniaverit de malo lecti qualiter ꝓcedendū sit in essonio, vel ꝙ si pluries se essoniaverit de malo lecti & semel languorem habuerit cessabit essonium de malo lecti, & ꝙ in toto placito nō habebit nisi unicum essoñ nec habebūt nisi unicum languorem. Nūc autē vidēdū, si plures sint ꝓticipes tenētes unicū jus habentes, qualiter sit ꝓcedendū in essonio de malo lecti post essoniū de malo veniendi, et quotiēs se essoniare possent, et quādo cessabit essoniū de malo lecti. Quotiēs ? et sciendū ꝙ sæpius, post quālibet apparitionē & diē legitimè in curia datū, simul si voluerit, vel vicissim post unicā apparitionē donec omnes habuerint sua essonia, s. quilibet unicū de malo veniēdi, & aliud de malo lecti, et tunc simul cōpareant ad respōdendū, cùm autē aliū diē receperint post diem datū de cōsensu ꝓtium, vel post visum petitū, vel warrātū vocatum, habere poterit omnia eadē essonia, & eodem modo, et sic ad quamlibet apparitionē donec terminetur loquela, & ita ꝙ nullus languor interveniat. Itē cùm sic se essoniaverint de malo lecti omnes simul, omnibus poterit adjudicari lāguor vel omnibus surrectio vel quibusdam surrectio & quibusdam languor : si omnibus surrectio, tunc veniant omnes simul et respondeant, si autem non venerint omnes vel quidam, tunc fiat de omnibus sicut supradictum est de uno, secundū ꝙ cōparuerint vel non. Si autē omnibus simul adjudicatus fuerit

## Chapter XV.

1. If there be several coparcener tenants having a single right, how proceedings are to be had in an essoin for bed-sickness. f. 362 b.

It has been explained above, if one tenant by himself has essoined himself for bed-sickness, in what way proceedings are to be had in an essoin, or that, if he has repeatedly essoined himself for bed-sickness and has once had languor, the essoin for bed-sickness will cease, and that in the whole suit he will not have but a single essoin nor will he have more than a single languor. But now we must see, if there be several co-parcener tenants having a single right, in what manner proceedings must be had in an essoin for bed-sickness after an essoin for sickness by the way, and how often they may essoin themselves, and when an essoin for bed-sickness will cease. How often? and it is to be known that repeatedly after each appearance and day assigned legitimately in court, together if they choose, or in turns after a single appearance, until all have had their essoins, to wit, each has had one for sickness on the way, and another for bed-sickness, and then let them all appear together to make answer, but when they have received another day after the day given with the assent of parties, or after a view has been requested or a warrantor vouched, each may have all the same essoins and in the same manner, and so upon each appearance until the trial be terminated, and so that no languor intervenes. Likewise when they have thus essoined themselves for bed-sickness all together, languor may be adjudged to them all, or licence to get up from bed to them all, or to some licence to get up from bed and to some languor; if licence to get up be granted to all, then let them all come together and make answer, but if they do not all or some come together, then let it be done with them all as above said concerning one, according as they have appeared or not. But if languor has been adjudged to them all together, let it be done with all as above said concerning one, according as all or some have langour

languor, fiat de omnibus ut supradictum est de uno, secundū q̄ omnes vel quidā languorē et diem suū servaverint vel nō servaverint. Si autē post unā apparitionē et diem datū vicissim cōparuerint omnes et vicissim se essoniaverint de malo lecti et vicissim p̄ eosdē vel diversos milites fuerit eis lāguor adjudicatus, si plures ibi videantur esse languores, tam in primo casu q̄m in secundo, cùm omnes tenētes sunt quasi unicū jus habētes, erunt omnes languores accipiendi pro uno languore p̄pter juris unitatem. Et cùm sic omnes languorē habuerint simul vel vicissim, sicut prædictū est, vel saltē ex pluribus unus, extunc nō ante cessabit essonium de malo lecti in p̄sonis omnium usque in finem litis, sicut supradictum est de uno tenente. Si autem quidam ex pluribus, vel unus se primò essoniaverit de malo veniendi, & quidam p̄sentes sint & quidam fecerint defaltam, essoniati diem habebunt p̄er essonium suum. Illis autē qui p̄sentes fuerint dabitur idem dies, contra absentes vero p̄cedendum erit ad defaltam, secundum q̄ inferius dicetur de defaltis. Illi vero qui essoniati fuerint ad alium diem, si voluerint essoniare se, poterunt de malo lecti. Et illi qui primo die diē ceperunt in judicio, ad diem suum se essoniare poterunt si voluerint, vel comparere. Si autem cōpareant, bene possunt alium diem recipere, & sic de die in diem donec eis constiterit de surrectione essoniatorum vel de languore, ut si languor fuerit adjudicatus & testatus, q̄ tunc eundē diē recipiant cum petente, et apud Turrim ut videtur, ne si ad bancum et in judicio diē receperint p̄ hoc dividentur causæ continentia. Et cùm sic diē receperint coram justiciariis in banco apud Turrim cum essoniato, cōpetit eis unicum essonium de malo veniendi apud Tur-

and have observed their day or have not observed it. But if after one appearance and a day given to them they have all appeared in turns, and have in turns essoined themselves for bed-sickness, and languor has been adjudged to them in turns by the same or by different knights, if there are seen to be there several languors as well in the first case as in the second, since all the tenants have as it were a single right, all the languors will have to be taken as one languor on account of the unity of right; and since all have had languor together or in turns, as aforesaid, or at least one out of many, from that time forward an essoin for bed-sickness will not cease in the persons of them all until the end of the lawsuit, as said above concerning a single tenant. But if some out of many or one has in the first place essoined himself for sickness by the way, and some are present and some have made default, the essoinees shall have a day through their essoiner. But to those who are present the same day shall be assigned, but against the absent proceedings shall be taken for a default, according to what will be said below concerning defaults. But those who have been essoined to another day, if they wish to essoin themselves they will be able to do so for bed-sickness. And those who on the first day took a day in the court, upon their day may essoin themselves, if they wish, or may appear. But if they appear, they may well receive another day, and so from day to day until they have ascertained concerning the convalescence of the essoinees or concerning their languor, so that, if languor be adjudged and testified, they may then receive the same day with the plaintiff, and at the Tower as it seems, lest if they shall receive a day at the bench and in the court, the continuity of the cause should be broken off. And when they have thus received a day before the justiciaries in the bench at the Tower with the essoinee, they are entitled to a single essoin for sickness on the way at the Tower, or before the justiciaries in

rim, vel coram justiciariis in judicio, q̃ si ibi nō venerint nec se essoniaverint poterūt esse in defalta, sicut ipse petēs. Si autē adjudicetur q̃ infirmitas fit in malum transiens, et q̃ certus dies detur essoniato q̃ compareat in judicio ad diem illum, possunt alii qui priùs essoniati non fuerint incipere tunc primò essonia sua unus vel omnes simul vel vicissim, ut supradictum est in principio. Et poterit unus vel quidam amittere
f. 363. essonium suū per tacitā renuntiationē. Esto q̃ A. cōparuerit, & B. se essoniaverit de malo veniendi, & ad alium diem comparuerit, & A. se essoniaverit, cùm B. ab initio electionē habuerit veniendi vel essoniandi se de malo lecti, eligendo viam veniendi, tacitè renuntiavit essoniū de malo lecti. Et unde cùm ita cōparuerit & diem receperit, ad alium diem non habebit essonium de malo lecti ratione essonii precedentis de malo veniendi, propter interuptionē, eo q̃ comparuit & ꝑpter tacitam renuntiationem. Et quia essonium de malo lecti im̄ediatè non sequitur essonium de malo veniendi. Et de essonio de servitio domini regis interposito possit disputari. Itē nec essonium habebit ille sic comparens de malo veniendi antequam omnes in juditio comparuerint, quia habet omnia essonia sua vel q̃ tantundē valet, ratione supradicta. Defaltam autem possunt facere omnes vel quidam illorum secundum q̃ de uno supradictum est. Et poterit unus ꝑtem suam amittere per defaltam ꝑpter suam negligentiam, & alius salvare se à defalta per suam diligentiam, quia res quæ petitur, licet com̄unis sit, patitur sectionem et divisionem. De viro autē & uxore implacitatis nō est ita, quia res uxoria divisionem non patitur inter virum

court, but if they have not come there nor have essoined themselves, they may be in default, just as the plaintiff himself. But if it be adjudged that the infirmity has become a transient malady, and that a certain day is given to the essoinee that he should appear in court on that day, others who have not been essoined hitherto may commence then for the first time their essoins, one, or all together, or in turns, as has been above said at the beginning. And one or some of them may lose their essoin by a tacit renunciation of it. Let it be that f. 363.
A. has appeared and that B. has essoined himself for sickness on the way, and has appeared on another day, and A. has essoined himself, when B. from the beginning has had his election of coming or of essoining himself for bed-sickness, by choosing a way of coming, he has tacitly renounced his essoin for bed-sickness. And hence when he has so appeared and has received a day, he shall not have an essoin for bed-sickness for another day by reason of his previous essoin for sickness by the way on account of the interruption inasmuch as he has appeared and on account of his tacit renunciation, and because an essoin for bed-sickness does not immediately follow an essoin of sickness by the way. And concerning an essoin for the king's service being interposed it may be disputed. Likewise a person so appearing shall not have an essoin for sickness by the way before all have appeared in judgment, because he has all his essoins, or what is equivalent, for the reason above said. For all or some of them may make a default, according to what has been said above concerning one person. And one person may lose his part through his own negligence by default, and another may save himself from default by his own diligence, because the estate which is claimed, although it be common, admits of section and division. But in the case of a man and his wife being sued it is not so, because the estate of the wife does not allow of division between man and wife.

& uxorem. Tota est enim utriusque in solidū, et non in cōmuni, cûm sit una caro vir et uxor, quāvis animæ diversæ. Et ideo, si unus ipsorum defaltā fecerit, utrique erit damnosa. Et cùm defalta facta fuerit, capiatur terra in manum domini regis ꝑ parvum cape. Et ille, qui defaltam fecerit, sum̄oneatur q̄ sit ad alium diem auditurus judicium suum, nulla facta mentione de eo sive sit vir sive sit uxor qui defaltā non fecit Si autē unus de pluribus moriatur antequam omnes comparuerint, cadit tota loquela. Si autem unus infra ætatem, sic remanebit loquela in suspenso usque ad ætatē. Si autē furiosus & dilucidis non gaudeat intervallis, sic remanebit loquela usq̄ ad mortē: quia ex quo semel animo & corpore incepit possidere, superveniente furore nunquàm desinere poterit animo possidere. Si autem dilucidis gaudeat intervallis, expectabitur tempus quo se melius habuerit. De fatuo vero & stulto aliud erit, secundum q̄ inferius plenius dicetur in tractatu de exceptionibus.

## Cap. XVI.

1. Si quis essoniatus fuerit in comitatu de malo lecti, qualiter debeat essoniatus apparere, et quando.

Si quis vero in com̄ essoniatus fuerit de malo lecti, illud idem observari videtur in comitatu quod in curia domini regis. Et cùm languor ei fuerit adjudicatus infra annum & diem venire debet ad aliquem certum locum ad hoc deputatum per comitatum, s. castrum aliquod, & ibi ostendere castellano quo die venerit, sicut constabulario Turris ostenderet si placitum esset apud West. in curia domini regis. Sed petens (ut videt̄) non habet necesse aliquem diem observare in

For the entirety of it belongs to both in the lump, and not in common, since man and wife are one flesh, although different souls. And accordingly if one of them makes default, it will be prejudicial to both. And when a default has been made, let the land be taken into the hand of the lord the king by the little *cape*. And he who has made default let him be summoned to present himself on another day in order to hear his judgment, no mention being made thereof whether it be the man or his wife who has not made default. But if one out of several dies before they have all appeared, the whole cause is at an end. But if one of them be under age, the cause shall remain in suspense until he has come of age. But if he be a madman and does not enjoy lucid intervals, the cause shall be stayed until his death, because since he has once begun to possess with the mind and with the body, madness having overtaken him he can never cease to possess mentally. But if he enjoys lucid intervals, the time shall be waited for when he will be better. But concerning a fatuous and foolish person it will be otherwise, according to what will be said more fully below in the Treatise on Exceptions.

## Chapter XVI.

1. If a person has been essoined in the county court for bed-sickness, in what way the essoinee ought to appear, and when.

But if any person have been essoined in a county court for bed sickness, it seems that the same thing should be observed in the county court as in the court of the lord the king. And when languor has been adjudged to him, he ought within a year and a day to come to some certain place assigned for that purpose by the county court, to wit, some castle, and there show to the castellan on what day he has come, just as he would show to the constable of the Tower, if the suit should be in the court of the lord the king at Westminster. But the plaintiff (as it seems) is not under the necessity of

cor̃, cùm languor fuerit adjudicatus & testatus, sed observet diem suum apud castrum, sicut faceret apud Turrim, si placitum esset in curia dñi regis. Et videndum est inter cætera utrum essoniaret se de malo lecti
f. 363 b. in eodē cor̃, ubi terra est quæ petitur vel in alio. Si autē in eodē cor̃, tunc habet vic. potestatē mittendi quatuor milites ad videndū, etiam sine brevi, qui videant & testificenť, & ita ꝓcedant in omnibus, secundū q̄ superius dictum est de curia dñi regis de defaltis, & licentia surgendi, & omnibus aliis. Si autē extra cor̃ fuerit essoniatus, tunc non habet vic. potestatē mittendi milites de cor̃ suo in alium cor̃, nec multo fortius milites de alio comitatu ad videndū, quia ad hoc non extenditur sua jurisdictio. Habet igitur petens necesse q̄ sibi perquirat per br̃e quòd essoniatus videatur per tale breve vic. directum ubi essoniatus jacuerit.

2. Breve de videndo eum, qui essoniatur in comitatu de malo lecti.

Rex vic. salutē. Mitte quatuor legales milites apud talem locum, ad videndum utrum talis infirmitas, qua A. essoniavit se de malo lecti versus B. de placito terræ in comitatu tuo vel in alio cor̃ tali, sit languor vel non. Et si sit languor, tunc ponant ei diem à die visus sui in unum annum & unū diem, q̄ tunc sit ad ꝓximū cor̃. Et si convaluerit antequā visus factus & testatus fuerit, bene poterit cor̃ dare licentiā surgendi essoniato, secundū q̄ in curia dñi regis observatur. Quam quidē si cor̃ essoniato denegaverit, ad querelā ipsius poterit dominus rex in defectu cor̃ licentiā surgendi dare. Et eodē modo, si loquela fuerit in curia

observing any day in the county court, when languor has been adjudged to him and testified, but let him observe his own day at the castle, as he would do at the Tower, if the suit were in the court of the lord the king. And it is to be seen amongst other things whether he has essoined himself for bed-sickness in the court of the same county where the land is which is claimed, or in another county. But if it be in the same county, then the viscount has power to send four knights to view, even without a writ, to view and testify, and so let them proceed in all respects according to what has been said above concerning the court of the lord the king, concerning defaults and a license to get up, and all other matters. But if he has been essoined outside the county, then the viscount has not the power of sending knights from his own county into another county, much less knights of another county to make a view, because his jurisdiction does not extend to this. The plaintiff therefore is under the necessity of applying for a writ that the essoinee may be viewed through a writ of this kind directed to the viscount of the county, where the essoinee may be lying. f. 363 b.

2. A writ for viewing him, who is essoined in a county court for bed-sickness.

The king to the viscount greeting. Send four loyal knights to such a place to see whether a certain infirmity, for which A. has essoined himself as for bed-sickness against B. in a suit for land in your county, or in another county, be a languor or not. And if it be a languor, then let them appoint a day from the day of the view for a year and a day, that he may then present himself in your county court. And if he shall have recovered before the view has been made and has been testified, the county court may well grant to the essoinee a license to get up, according to what is observed in the court of the lord the king, which if the county court has denied to the essoinee, upon his complaint the lord the king may in the defect of the county court grant him a license to get up. And in the same way, if the cause has

baroñ vel alterius qui curiam habet, poterit dñs rex licentiam dare surgendi in defectu curiæ per tale br̃e. Forma brevis supra, ubi petitur licentia surgendi, & sic incipit: Ostensum est nobis. In fine notandū, q̃ si essoniatus ad diem sibi datū p̃ visores non venerit, excusari poterit à defalta p̃pter casus fortuitos, & legitima impedimenta intervenientia, si p̃bentur, secundū q̃ supra tactū est in parte, & inferius dicetur plenius de defaltis.

## Cap. XVII.

1. De essonio de malo villæ. Britton, vi. ch. viii. § 4.

Est etiam inter alia essonia essoniū anomalū, eo q̃ nō sequitur regulam aliorū essoniorū, q̃ dicitur essoniū de malo villæ, ubi quis primo die in curia cōparuerit & se obtulerit, & sine responso eodē die recesserit, si p̃pter infirmitatē aliquā supervenientē, à loco ubi hospitatus fuerit & receptus se transferre non possit, nec ad curiā venire, mittere debet ad curiam duos essoniatores qui re vera essoniatores dici non possunt, quia diē non recipiunt, sed nuntii & excusatores, qui in curia publicè p̃testantur, q̃ talis tali infirmitate detentus est in eadē villa, vel in alia tali ubi p̃noctavit, quòd ad curiā venire non possit pro lucrari nec pro p̃dere, & sic recedant, & eodē modo mittat secundo die duos, sed alios à duobus primis, & eodē modo tertio die sed diversos à primis, & sic excusatur usq̃ ad quartū, & quarto die mittantur ad infirmū ex parte justic. quatuor milites, si in curia vell in villa inveniantur, ad audiendū q̃m talis loco suo attornare voluerit

been in the court of a baron or of another person who holds a court, the lord the king may grant a license to get up on the failure of the court by a writ of this kind. The form of the writ as above when a license to get up is asked for, and it begins thus: It has been shown to us. In the end it is to be noted, that if the essoinee on the day appointed to him by the viewers has not come, his default may be excused on account of fortuitous accidents and legitimate impediments intervening, if they are proved, according to what has been above touched upon in part, and what will be explained more fully below in treating of defaults.

## Chapter XVII.

1. Of an essoin for vill-sickness.

There is amongst essoins an anomalous essoin, inasmuch as it does not follow the rule of other essoins, which is called an essoin for vill-sickness, where a person has appeared on the first day in the court and has presented himself, and has withdrawn on the first day without an answer, if on account of some supervening infirmity he cannot transport himself from the place where he has been lodged and entertained, nor come to the court, he ought to send to the court two essoiners, who cannot be termed properly essoiners, because they do not receive a day, but messengers and excusers, who bear witness publicly in the court, that so-and-so is detained in the said vill by a certain infirmity, or in a certain other vill where he has passed the night, so that he could not come to the court to gain nor to lose, and so they may retire, and in the same way let him send on the second day two persons, but different persons from the two first, and in the same way on the third day two persons, but different from the preceding persons, and in this manner he is excused up to the fourth day; and on the fourth day let there be sent on the part of the justiciaries four knights, if they can be found in the court or in the vill, to hear what person so-and-so wishes to

ad lucrandū vel ꝑdendū in loquela quæ est inter ipsum & talē petentē. Si autē ipsum ibi invenerint, capietur attornatus si ipse ꝑsonalitèr venire non possit. Si autē in villa tali nō inveniaṫ & hoc testeṫ per quatuor milites, erit tenens in defalta, ac si essoniatus esset de malo lecti. Sed nec ōni cōpetit essoniū istud nec ōni loco.

2. f. 364. Ubi non jacet essonium de malo villæ.

In com̃ autem non jacet essoniū de malo villæ, propter brevitatem temporis de die comiṫ, & ubi non expectatur quartus dies, ut de termino Sancti Hilarii anno regni regis Henrici sexto in comitatu Buck., de Alicia de Jarpmille & Petro de Imnere. Itē nec coram justiciariis assignatis ad aliquam assisam vel juratam capiendam, vel aliquid tale faciendū ad certum diē, ubi non expectatur quartus dies. Itē nec in persona alicujus attornati sive in comitatu sive in curia dñi regis factus fuerit attornatus, quia licet milites mittantur ad eum, ipse attornatū facere nō possit non magis quâm ꝑcurator ꝑcuratorem: ut de term̃ Paschæ anno regni regis H. nono in comitatu Buck., de attornato Henry de S. Warerico, qui se essoniavit apud West de malo villæ ꝑ tres dies, et in quarto die (habito consilio & tractatu inter justiciarios) non fuit ei essonium de malo villæ allocatum, quia non potuit facere attornatum, etsi quarto die venire posset personaliter, tamen salvare non posset tres dies p̃teritos, et unde dominus suus fuit in defalta, & capienda esset terra in manū dñi regis per parvum cape, eo quòd in curia optulit se pro domino suo, & à justic. qui recordum habent visus fuit in curia. Itē esto quòd post essonium de malo lecti & languorē testatum per quatuor

attourn in his place to gain or to lose in the cause which is between him and so-and-so the plaintiff. But if they shall find him there, an attorney shall be taken, if he cannot come himself personally. But if so-and-so cannot be found and this is testified by the four knights, the defendant will be in default, as if he had been essoined for bed-sickness. But not every person is entitled to such an essoin, nor at all times.

2. f. 364. When an essoin of vill-sickness does not lie.

But an essoin of vill sickness does not lie in the county court on account of the shortness of the time from the day of the county court, and where the fourth day is not waited for, as in St. Hilary term in the sixth year of the reign of king Henry in the county of Buckingham, concerning Alice de Jarpmille and Peter de Imnere. Likewise not before the justiciaries assigned to hold any assise or jury, or to do anything similar by a certain day, where the fourth day is not waited for. Likewise not in the person of an attorney, whether he has been appointed attorney in the county court or in the court of the lord the king, beause although knights are sent to him, he himself cannot appoint an attorney any more than an agent can appoint an agent, as in Easter term in the ninth year of the reign of king Henry in the county of Buckingham, concerning an attorney Henry de S. Warericus, who essoined himself at Westminster for vill-sickness for three days, and on the fourth day (upon a consultation and a discussion amongst the justiciaries) an essoin for vill-sickness was not allowed to him, because he could not appoint an attorney, although he might have come personally upon the fourth day, nevertheless he could not save the past three days, and hence his principal was in default, and the land was to be taken into the hand of the king by a little *cape*, inasmuch as he had presented himself in the court on behalf of his principal, and had been seen in the court by the justiciaries, who have a record. Likewise let it be that after an essoin for bed-sickness and a languor

milites, fecerit quis defaltam antequam in curia comparuerit, eodem modo capienda erit terra in manum domini regis per parvum cape, ac si priùs in curia cōparuisset, quia diem sibi datum per quatuor milites dedicere non potest non magis quâm si ei daretur in curia, quia in hoc habere debent recordum, nec mandabitur dies captionis sicut per magnum cape, quia nunquam dicetur, quia non servavit diē sibi datū per quatuor milites. Et q̄ habent recordum, & q̄ contra ipsorum recordum defendi non poterit, nec p̄ legem, nec per unum audientē & unum intelligentē, quin stetur eorum recordo: habetis de itinere M. de Pateshull in comitatu Leycestr̄ de tempore regis Johannis, sed hoc fuit, quia essoniatus coram quatuor militibus cognovit se esse essoniatum, quod quidem defendere non potuit per legem contra eorum recordum, cùm ipsum in lecto invenerint essonium non dedicentem. Si autem sic eum non invenerint, aliud erit. Eodem modo si quis extra judicium coram justiciariis attornatum fecerit, licet in curia, si comparuerit[1] & defaltam fecerit, capienda est[2] terra in manum domini regis p̄ parvum cape, ac si in curia comparuisset, quia sum̄onitionem defendere non potuit contra recordum justic. & eo q̄ fecit attornatum, p̄ consequens cognovit se esse sum̄onitum, & secundum quod dicetur infra plenius de defaltis.

Tempore regis Johannis.

[1] "licet in curia non comparu- "erit," MS. Rawl. C. 160.

[2] "capienda erit," MS. id.

testified by four knights, a person has made default before he has appeared in the court, in the same manner his land will have to be taken into the hand of the lord the king by a little *cape*, just as if he had not previously appeared in the court, because he cannot deny the day assigned to him by the four knights any more than if it were assigned to him in the court, because in this they ought to have a record, nor shall a day of caption be commanded as by a great *cape*, because it shall never be said, because he has not observed the day assigned to him by the four knights. And that they have a record, and that their record cannot be disputed, neither through the law nor through one person hearing and one person understanding, so that the matter should not abide by their record, you have a case in the iter of Martin de Pateshull in the county of Leicester in the time of king John, but this was because the essoinee had acknowledged before the four knights that he had been essoined, which he could not dispute through the law against their record, since they found him in bed not denying the essoin. But if they have not so found him, it will be otherwise. In the same manner if any person has extrajudicially appointed an attorney before the justiciaries, although in the court he has not appeared and has made default, the land will have to be taken into the hand of the lord the king by the little *cape*, just as if he had appeared in the court, because he cannot dispute the summons against the record of the justiciaries, and inasmuch as he has appointed an attorney, he has consequently acknowledged that he had been summoned, and according to what will be said below more fully concerning defaults.

# TRACTATUS TERTIUS
# LIBER QUINTI,
# IN QUO TRACTATUR DE DEFALTIS.[1]

## Cap. I.

1. De contumacibus et non venientibus ad judicium post legitimam summonitionem. f. 364 b.

Redeamus igitur ad diem sum̄onitionis in actione reali. Dictum est supra qualiter quis excusatur p essonia, si ad judicium non venerit cûm fuerit sum̄onitus legitimè: Nunc autem dicendum est de contumacibus & nō venientibus ad judicium, qualiter ꝑcedendum sit contra eos in actione reali secundū q fuerit simplex, mixta, vel duplex. Et ideo videndum quis dici debeat contumax & quæ pœna sequaṫ, cum, quando res aliqua petitur im̄obilis per actionem in rem (contumax dici poterit sive reus latitet sive non) ad judicium summonitus sui copiam nō fecerit nec defensus fuerit. Latitare autem est si quis se turpiter occultaverit, & copiam sui non facere est, quando reus id agit ne adversarius potestatem sui habeat, licet præsens fuerit in curia. Et sive reus contumax fuerit sive non, sufficit ad hoc quòd ꝑcedatur contra ipsum, q simpliciter absens sit ex quacunq̃ causa. Et unde si primo die non venerit, nec secundo, nec tertio, nec quarto, tunc offerente se liti petente, quocunq̃ die venerit ante

[1] The text is continued in MS. Rawl. C. 160 without any notice of its being a distinct treatise, but simply with the title "De Contu-" macibus &c." prefixed to it as in the side note.

# THE THIRD TREATISE

OF THE

# FIFTH BOOK,

# WHICH TREATS OF DEFAULTS.

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## Chapter I.

Let us return to the day of summons in a real action. It has been explained above in what manner a person is excused through essoins, if he has not appeared for judgment, when he has been legitimately summoned. We must now speak of persons who are contumacious and do not appear for judgment, in what manner proceedings are to be had against them in a real action, according as it may be simple, mixed, or double. And accordingly it is to be seen who ought to be called contumacious, and what penalty attends him if on an occasion when some immovable thing is claimed by an *actio in rem* (he may be called contumacious whether he lies hidden or not), having been summoned to judgment, he has not made himself available, nor has been defended. But a person is said to lie hidden, if he has basely concealed himself, and he is said not to make himself available, when as a defendant he does that which prevents his adversary having any power over him, although he be present in the court. And whether the defendant shall be contumacious or not, it is sufficient for proceedings to be taken against him, that he is simply absent from whatever cause. And hence if he has not come on the first day, nor on the second, nor on the third, nor on the fourth, then upon the plaintiff offering himself to join issue, on whatever day he may

1. Of persons contumacious and not coming to judgment after a legitimate summons. f. 364 b.

quartum diem, capiatur terra sive res petita in manū dñi regis propter defaltam non venientis, quam quidem captionem modica sequitur pœna, vel etiam nulla. Et unde[1] si reus venerit infra xv. dies post captionem & illam p̄ plevinam petierit, si ad diem sibī datum in curia defendere se possit de defalta, si petens inde judiciū petierit, reformabitur ei possessio, ut de principali respondeat. Sed quid si primo die non venerit tenens, & petens primo die se obtulerit & visus fuerit à justic. in curia qui habent recordum, si petens in crastino se obtulerit, si defaltam sanare non possit, amittere poterit seysinam. Et eodē modo si tertio die vel quarto.

2. Compensatio defaltarum.

Sed quid si neuter ipsorum cōparuerit primo die, sed uterque in crastino, tunc fiat compensatio defaltarum, cùm pares sint in culpa: ut supra dicitur. Et sic fiat de aliis diebus usque ad quartum diem. Si autem impares fuerint, ut p̄dictum est, q̄ aliquo die compareat petens, & tenens non, vel è contrario, tunc fiat eodem modo ut supra. Si autē primo die comparuerit petens, & tenens non, et in crastino tenens, f. 365. et petens non, si tertio die comparuerint ambo, fiat inter eos ut supra dictum est compensatio, & sic semper usq̄ ad quartum diē, & in quarto die, & ulterius non, nisi petens voluerit. Poterit tamen tenens, & eodē modo petens, excusare se usq̄ ad quartū diē, multis modis. Tenens s. antequam in curia cōparuerit, si sum̄onitionem defenderit & sursisam, & essoniū tam de malo veniendi q̄m de malo lecti, si forte fuerit[2] interjecta, secundū q̄ supradictū est in

[1] "unde," omitted MS. Rawl. C. 160.

[2] "fuerint," MS. Rawl. C. 160.

have come before the fourth day, let his land or the thing claimed be taken into the hand of the lord the king on account of the default of his not coming, which caption a moderate penalty or none at all follows. And hence if the defendant shall have come within fifteen days after the caption and has claimed it by a plevin, if on the day given to him in the court he can defend himself concerning the default, if the plaintiff shall claim judgment thereupon, the possession shall be restored to him, that he may answer on the principal point. But what if the tenant has not come on the first day, and the claimant has presented himself and has been viewed by the justiciaries in the court who have a record, if the claimant has presented himself on the morrow, if he cannot cure his default, he may lose the seysine. And in the same manner on the third day or on the fourth day.

2. A compensation of defaults.

But what if neither of them shall have appeared on the first day, but both of them on the morrow, then let there be a compensation of defaults, since they are alike in fault, as has been said above. And so let it be with other things up to the fourth day. But if they shall have been unlike, as has been said above, that on a certain day the claimant should appear and the tenant not, or contrariwise, then let it be done in the same manner as above. But if on the first day the claimant shall have appeared, and the tenant not, and on the morrow the tenant shall have appeared and the claimant not, if on the third day both shall have appeared, let there be f. 365. as above said a compensation between them, and so up to the fourth day and on the fourth day, but no further, unless the claimant is willing. But the tenant may, and in the same manner the claimant may excuse himself up to the fourth day in many ways. The tenant for instance, before he has appeared in the court, if he has denied the summons and the adjournment, and if essoins as well of sickness in coming as of bed-sickness have by chance been interposed, according to what has been said above in the treatise con-

tractatu de sum̄onitionibus. Itē excusare se poterit usq̄ in quartū diē, & in quarto die, p̄ rationabilia impedimēta intervenientia, si fuerint p̄bata: & etiā post quartum diē, si infra quartum diē p̄ nuntium legitimè fuerit excusatus, qui impedimentū ostenderit corā justiciariis in juditio, quæ talia esse possunt.

3. De excusationibus non venientis. Britton, vi. ch. vi. § 1.

Si quis per vim majorē detentus fuerit, cui resistere nō possit, ut si captus fuerit & in prisona detentus, non tamen ob sui culpā. Itē si inciderit in latrones qui eū ligaverint, & spoliaverint, & detinuerint forte, q̄ nuntiū mittere nō possit infra quartū diē, quo casu post quartū diē excusabitur, dum tamē impedimentū p̄betur. Itē excusari poterit p̄ inundationē aquarū & tēpestatem. Item si pons solutus fuerit, vel navigium subtractū per fraudē petentis, dum tamē ei objici nō potest q̄ ire possit p̄ circuitum, vel q̄ alii eadē die qua transire debuit com̄ode & sine difficultate & absq̄ periculo transierunt. Secus autem erit si cum periculo, quia nō debet quis se in periculis & infortuniis exponere. Eodē modo poterit impedimentū intervenire de nivibus, & glacie, & aliis multis modis. Si vero infra quartū diē non venerit nec se excusaverit, ut p̄dictum est, sive ita fuerit impeditus sive nō, capiatur terra vel res petita in manū dñi regis, p̄pter defaltā, per visum legalium hominum, & fiat talis irrotulatio petente se liti offerente: A. optulit se quarto die versus B. de placito q̄ reddat ei tantum terræ cum p̄tinentiis in tali villa vel advocationē talis ecclesiæ, vel com̄u-

cerning summonses. Likewise he may excuse himself up to the fourth day, and on the fourth day on account of reasonable impediments intervening, if they shall have been proved, and even after the fourth day, if within the fourth day he has been legitimately excused through a messenger, who shall have shown an impediment before the justiciaries in court, which may be of this kind.

3. Of the excusations of a person not appearing.

If any one shall have been detained by *vis major*, which he could not resist, as if he has been taken captive and has been detained in a prison, not however from any fault of his own. Likewise if he has fallen into the hands of robbers, who have bound him and stripped him and by chance detained him, so that he could not send a messenger within the fourth day, in which case he will be excused after the fourth day, provided however the impediment be proved. Likewise he may be excused through an inundation of waters and bad weather. Likewise if a bridge has been loosened, or a ferry boat withdrawn through the fraud of the claimant, provided however it cannot be objected to him that he might have come by a circuitous road, or that on the same day on which he ought to have passed others have passed conveniently and without difficulty and without peril. But it will be otherwise, if with peril, because a person ought not to expose himself to perils and misfortunes. In the same way an impediment may intervene from snow or ice and in many other ways. But if he shall not have come nor excused himself within the fourth day, as said above, whether he has been so impeded or not, let the land or the thing claimed be taken into the hand of the lord the king, on account of default, by the view of loyal men, and let there be an enrolment of this kind upon the claimant presenting himself to join issue: A. has presented himself on the fourth day against B. in a suit that he should restore to him so much land with its appurtenances in such a vill, or the advowson of such a church, or common of pasture for so many beasts,

niam pasturæ ad tot averia quæ clamat ut jus suū versus eum: vel, ut dotē suā, et sic de aliis rebus omnibus q̃ petuntur ex tali actione, & B non venit, & sum̄oneas &c. Judiciū &c. Terra vel talis res capiatur in manū dñi regis, & dies &c., et sum̄oneatur q̃ sit ad talem diē inde responsurus & ostensurus, quare nō fuit corā justic. nostris ad talem diē &c. per tale br̃e. Forma brevis talis est, q̃ dicitur magnum cape.

4. Si legitime summonitus defaltam fecerit, breve, quod vocatur magnum cape.

Rex vic. salutē. Cape in manū nr̃am p̃ visū legaliū hominū de comitatu tuo tantā terrā cū p̃tinentiis in tali villa, vel pasturā ad tot oves, vel talē advocationē, q̃m A. de N. in cur̃ nr̃a corā justic. nr̃is apud West. clamat ut jus suum versus talem p̃ defectu ipsius talis, vel si dos petita fuerit, tunc dicatur ita: scilicet quam A. (q̃ fuit uxor B.) in curia nostra &c. clamat in dotē versus C. p̃ defectu ipsius C. vel tertiā partē tantæ terræ cum p̃tinentiis &c., et ita de singulis rebus quæ petuntur per actionem in rem, secundum formam brevis originalis, & tunc ibi sic: Et diem captionis scire facias justic. nostris apud West. per literas tuas sigillatas. Et sum̄oneas per bonos sum̄onitores prædictū C. q̃ sit coram eisdem justic. nostris apud West. inde respōsurus, & ostensurus quare nō fuit corā eisdē justic. nostris apud West. ad talē diem, sicut sum̄onitus fuit, vel quare non observavit diē sibi datum p̃ f 365 b. essoñ suū ad talem terminū (si forte fuerit essoniatus & diē habuerit p̃ essoniatorē suū). Et habeas ibi sum̄onitores, & hoc breve, & nomina eorū p̃ quorū visum hoc feceris. Teste &c. Et notandum q̃ captio ista in manū dñi regis p̃ magnū cape locū habet ubi quis

which he claims as his right against him: or as his dower, and so concerning all other things which are claimed from such an action, and B. has not come, and summon &c. Judgment &c. Let the land or such thing be taken into the hand of the lord the king, and a day &c., and let him be summoned that he be present on such a day to answer thereon, and to show cause wherefore he was not present before our justiciaries on such a day &c. through a writ of this kind. The form of the writ is of this nature, which is called a great *cape*.

4. If legitimately summoned he has made default, a writ which is called a great *cape*.

The king to the viscount greeting. Take into my hand by the view of loyal men of thy county so much land with its appurtenances in such a vill, or pasture for so many sheep, or such an advowson, which A. de N. in our court before our justiciaries at Westminster claims as his own right against such an one on account of his default: or if dower be claimed, then let it be stated thus to wit, which A. (who was the wife of B.) in our court &c. claims for dower against C. on account of the default of the said C., or a third part of so much land with its appurtenances &c., and so concerning the particular things which are claimed by an action *in rem*, according to the form of the original writ, and then there thus: and cause the day of the caption to be made known to our justiciaries at Westminster by thy sealed letters. And do thou summon by good summoners the aforesaid C. that he be present before our said justiciaries at Westminster on such a day according as he has been summoned, or wherefore he has not observed the day given to him through his essoin in such a term (if by chance he shall have been essoined and had a day appointed through his essoiner). And cause the summoners to be there present and this writ and the names of those through whom thou hast made this view. Witness, &c. And it is to be noted, that the caption into the hand of the lord the king through a great *cape* has place, where a person has made f. 365 b.

defaltā fecerit anteqm in curia cōparuerit, vel attornatū fecerit, q tantundē valet.

5. Natura et effectus brevis magnum cape juxta virtutem vocabulorum contentorum in brevi.

Et quia scire nō poterit quid sequatur ex tali captione in manū dñi regis, nisi sciatur de virtute brevis et vocabulorū in brevi contentorū, inprimis videndū est, quid sequatur ex tali vocabulo sive dictione, cape in manū nostrā &c.; et quid inde sequatur perpendi poterit manifeste ex p̃missis paulò ante. Ad hoc autē, q dicitur, per visum legalium hominū, ut ꝑpendi possit & testificari (si opus fuerit) si capta fuerit in manum dñi regis, et per eorū visum. Et si capta fuerit per eorū visum, tunc quo die, quia in hoc habent recordum cui cōtradici nō poterit, quantū ad hoc, secundum q defalta facta fuerit ante apparitionē vel post, et secundum quod sum̄onitionem testati fuerint vel non. Itē continetur, pro defectu talis, sine aliqua ꝑbatione, quia sufficit sola absentia, licet non ꝑbetur ex qua causa, & licet excusationē habuerit, tamen de excusatione cōstare nō poterit justic. anteqm tenens apparuerit excusationē suam ꝑtendēdo, præmittendo[1] et ꝑbando, ut supra de excusationibus. Item dies captionis indorsari debet in tergo brevis, ut per hoc & attestationē militū sciri possit quo die terra capta fuerit, & per consequens si ad horam petita fuerit ꝑ plevinam, quia peti debet per plevinam infra quindenam postqm capta fuerit in manum dñi regis: q si antequam capiatur in manum dñi regis petatur per plevinam, vel post quindenam, nō petitur ad horam:

[1] " p'mittendo," omitted MS. Raw C. 160.

default before he has appeared in the court, or has constituted an attorney, which is equivalent.

5. The nature and effect of the writ magnum cape, according to the virtue of the words contained in the writ.

And because it cannot be known what follows upon such a caption into the hands of the lord the king, unless it be known concerning the virtue of the writ and of the terms contained in the writ, we must see in the first place, what follows from such a term or phrase, "take into our hand," &c.; and what ensues thereon may be clearly inferred from what has been premised shortly previously.

But in regard to this, which is said, "through the "view of loyal men," that it may be understood and testified (if it be necessary) if it has been taken into the hand of the king, and through their view. And if it has been taken through their view, then "on what "day," because they have in this a record, which cannot be contradicted as far as this is concerned, according as default has been made before appearing in court or after, and according as they have testified to the summons or not. Likewise it is contained, "for the failure "of so-and-so," without any proof, because his absence alone is sufficient, although it be not proved from what cause, and although he may have an excuse, nevertheless it cannot be established before the justiciaries concerning his excuse, before the tenant has appeared holding forth his excuse, premising and proving it, as above concerning excusations. Likewise the day of the caption ought to be indorsed on the back of the writ, that thereby and by the attestation of the knights it may be known on what day the land was taken, and consequently if it has been claimed by a plevin at the proper hour, because it ought to be claimed by a plevin within the fifteenth day after it has been taken into the hand of the lord the king, because if it be claimed by a plevin before it has been taken into the hand of the lord the king, or after the fifteenth day, it is not claimed at the proper

et ideo peti poterit maturiûs, vel tardiùs quàm deberet. Debet petitio sic irrotulari. Talis petiit per talem (si per alium petierit, quàm per seipsum) tali die terram suam p plevinam, q̃ capta fuit in manū dñi regis per defaltam quam fecit versus talem, coram justic. nostris talibus tali die: et br̃e non habebit, nec aliud fiet, nisi q̣ dicetur ei, quòd observet diem suum in brevi de captione contentū.

6. Qualiter terra capta in manum domini regis per defaltam peti debeat per plevinam.

Videtur igitur per hoc q̣ p talē plevinam & diem receptum p se, cùm in p̣pria p̣sona petierit & diem receperit secundū sum̄onitionē p breve de captione, sive sum̄onitus fuerit, sive non, q̣ ulterius dedicere non poterit sum̄onitionem, si postea in judicio defaltā fecerit, s. post captionem. Si autē per alium quàm per semetipsū, videtur q̣ fieri debet contrarium, q̣ defendi possit per legem, si primam & ultimam defenderit sum̄onitionem. Captio vero simplex esse debet. Non enim debet per hoc tenens impediri, quin omnium rerum & tenemētorū illorū liberā habeat administrationē, sive jus habuerit in eisdē sive nō, quia si sic non esset, potius diceretur disseysina quâm districtio. Et unde, si tempore quo res sic fuerit in manu dñi regis contingat ecclesiam aliquam vacare q̣ sit de p̣tinentiis, ad tenentem spectabit collatio, et non ad regē. Cûm autē sic petatur per plevinam, non erit statim replegianda tenenti, antequam in judicio comparuerit, & tunc sciatur utrum petens se tenere voluerit ad principale placitū vel ad defaltā. Cùm autem ad principale placitum se tenuerit, sic renunciat defaltæ, et erit defalta

f. 366.

hour, and therefore it may be claimed sooner or later than it ought to be. The claim ought to be enrolled in this manner: "So-and-so claimed through such a person "(if he has claimed through another than himself) on "such a day through a plevin his land, which had been "taken into the hand of the lord the king, through the "default which he made towards so-and-so before our "justiciaries on such a day": and he shall not have a writ, nor shall anything else be done, except that it shall be said to him, that he should observe his day contained in the writ of caption.

6. How land taken into the hand of the lord the king through default ought to be claimed through a plevin.

It seems therefore through this, that through such a plevin and a day received by himself, when he has claimed in person and received a day according to a summons through a writ of caption, whether he has been summoned or not, that he cannot any further deny the summons, if he has afterwards made default in court, to wit, after the caption. But if [he has claimed] through another than himself, it appears that the contrary ought to be done, that it may be contested by law, if he has disputed the first and last summons. But the caption ought to be simple. For the tenant ought not to be thereby impeded from having the free administration of all the estates and the tenements, whether he has the right in them or not, because if it were not so, it would be rather termed a disseysine than a distress. And hence, if during the time in which the estate has thus been in the hand of the lord the king it has happened that a church which is amongst its appurtenances becomes vacant, the collation to it will belong to the tenant, not to the king. But when it is thus claimed through a plevin, it will not have to be forthwith replevined to the tenant, before he has appeared in court, and then let it be known whether he wishes to hold himself to the principal plea or to the default. But when he holds himself to the principal plea, he thereby renounces the default, and the default will be null and f. 366.

nulla, et res replegianda. Si autem se tenuerit ad defaltam, adhuc non erit replegianda, donec sanaverit defaltam, q si sanare non possit, extunc erit seysina petenti adjudicanda.

7. Quid fieri debet in placito advocationis post defaltam.

Dicitur in p̃cedenti, quòd res petita capi debet in manum dñi regis. Esto igitur, q in placito advocationis fieri debeat captio in manum dñi regis, sed cùm jus advocationis incorporale sit & invisibile, nec tangibile, qualiter ergo capi poterit in manum dñi regis q videri non poterit nec tangi? Erit igitur officium vicecomitis in hac parte, quòd, assūptis secum pbis & legalibus hominibus vicinis, accedat ad ecclesiā cujus advocatio petitur, & ibi publicè ꝑtestetur corā pbis hominibus q seysiat in manū dñi regis ecclesiā illā, et p consequens jus advocationis quod est in corpore ecclesiæ, licet illud jus sit incorporale. Et cûm ceperit corpus in manum dñi regis quod est visibile & tangibile, per consequens capiť id quod est incorporale, licet invisibile & non tangibile. Jus enim sine subjecto vel corpore cui insit esse non poterit. Et vulgariter dicitur, talis habet vel petit jus advocationis talis ecclesiæ, & non talis manerii: et ideo non est necesse q maneriū capiať, licet ecclesia sita infra aliquod manerium sit de ꝑtinentiis ejusdem manerii. Continetur etiam in brevi de captione, quod tenens sum̄oneatur quòd sit respōsurus de principali placito, et ostensurus &c. Ad quod sciendū, quòd ad talē sum̄onitionē nunqm sequatur essoniū, quia priùs oportebit tenentē respondere de defalta. Itē nec dies rationa-

the estate will have to be replevined. But if he has held himself to the default, it will not have to be replevined, until he has cured his default; but if he cannot cure it, thereupon the seysine will have to be adjudged to the claimant.

7. What ought to be done in a plea of advowson after a default.

It is said in the preceding paragraph that the estate claimed ought to be taken into the hand of the lord the king. Let it be therefore that in a plea of advowson a caption into the hand of the lord the king ought to be made; but since the right of advowson is incorporeal and invisible, and not tangible, how therefore can that which cannot be seen nor be touched be taken into the hand of the lord the king? It will therefore be the office of the viscount in this part, that having associated with himself honest and loyal men who are neighbours, he should proceed to the church, of which the advowson is claimed, and should there publicly protest in the presence of the honest men that he seizes into the hand of the lord the king that church, and consequently the right of advowson, which is in the body of the church, although that right be incorporeal. And when he has taken into the hand of the lord the king that body which is visible and tangible, he consequently takes that which is incorporeal although invisible and not tangible. For the right cannot be without the subject or body in which it is inherent. And it is commonly said, so-and-so has or claims the right of advowson of such a church, and not of such a manor, and therefore it is not necessary that he should take the manor, although the church being situated within a manor is of the appurtenances of the said manor. It is contained also in the writ of caption, that the tenant be summoned in order to answer in the principal plea and to show, &c. as to which it is to be known, that upon such a summons an essoin never follows, because it will be incumbent that the tenant should first answer concerning the default. Likewise not a reasonable day on account of contumacy,

bilis ꝑpter contumaciā s. xv. dierum, non magis quâm ad disseysinā propter roberiā. Sum̄onitores tamen venire debent coram justic. si opus fuerit ad testificandam sum̄onitionem.

8. Qualiter defenditur summonitio et sursisa per legem.

Ad diem vero sum̄onitionis ꝑ breve de captione, aut venit tenens aut non venit, si autē venerit, tunc inprimis queratur à petente utrū se tenere voluerit ad principale placitū, vel capitale, vel ad defaltā. Si autē ad capitale placitū, tūc quasi renūtians defaltæ, statim et eodē die ad capitale placitū petenti respōdebit. Si autē se tenuerit ad defaltā, tūc habet tenēs necesse defēdere sum̄onitionē & sursisam, et similiter aliquādo tam essonia de malo veniēdi qm essonia de malo lecti, si fuerint interjecta, ubi oportet q diligēs fiat examinatio ad cautelā. Si autē simpliciter defendat sum̄onitionē & sursisā, & appareāt sum̄onitores qui sum̄onitionē testētur, ubi priùs fuerit sufficienter testificata, & qui more testiū diligēter & separatī examinati, & in ōibus cōvenientes, sufficiēter ꝑbaverint sum̄onitionē, tūc demū necesse erit tenēti ꝑpter ꝑsumptionē testificationis sum̄onitorū, sum̄onitionē defēdere ꝑ legē, cū nulla sit sum̄onitio nisi cū sit testificata et ꝑbata. Nec erit (ut ꝑdictū est) ĩra replegianda anteqm tenēs legē fecerit, vel in lege faciēda defecerit. Dabitur igitur ꝑtib⁹ ali⁹ dies de lege faciēda, cū tenēs plegios invenerit de lege faciēda. Nec etiā poterit tenēs attornatū facere ad legē faciēdā, cū ipse tenēs legē vadiaverit, qd si fecerit, nisi illā fecerit in ꝑpria ꝑsona, defaltā facit. Ad diē vero sibi datū ad legē faciendā, poterit tenēs se essoniare si voluerit, & petēs eodē modo, eodē die, & vicissī, si voluerit, quia nō licet ī

to wit, of fifteen days, not more than upon a disseysine on account of a robbery. But the summoners ought to come before the justiciaries, if it should be necessary, to testify to the summons.

8. How the summons and the neglect are to be contested at law.

But on the day of the summons by a writ of caption, the tenant either comes or he does not come, but, if he has come, then let it be first questioned by the plaintiff whether he wishes to hold himself to the principal or capital plea or to the default. But if to the capital plea, then as it were renouncing the default, he shall answer to the claimant forthwith and on the same day upon the capital plea. But if he shall hold himself to the default, then the tenant must of necessity contest the summons and the neglect, and in like manner sometimes as well essoins of sickness by the way as essoins of bed-sickness, if they have been interposed, where it is incumbent that there should be a diligent examination for caution's sake. But if he simply contests the summons and the neglect, and the summoners should appear to testify to the summons, where it has previously been sufficiently testified, and who having been diligently and separately examined in the manner of witnesses, and agreeing in all matters, have sufficiently proved the summons, then it will be necessary for the tenant on account of the presumption arising on the testification of the summoners, to contest the summons at law, since there is no summons unless it has been testified and proved: nor will the land (as above said) have to be replevined before the tenant has made his law, or has failed in making his law. Another day will therefore be given to the parties for making their law, when the tenant has found sureties that he will make his law. Nor will the tenant be able to constitute an attorney to make his law, since the tenant himself has wagered his law, which if he has done, he makes default if he does not make his law in person. But on the day given to him to make his law the tenant may essoin himself, if he will, and the claimant in the same manner on the same day, and in turns, for that is not

hac ꝑte tenēti q'd petēti nō licet nec ecōversò. Ad diē vero legis, aut tenēs facit legē suā, aut deficit in
f. 366 b. lege faciēda. Si autē legē fecerit, tanquā excusatus à defalta eodē die ad placitum principale respondebit. Sufficit enim ad dilationē & ꝑ rationabili sum̄onitione tenentis, tempus intermedium inter legem vadiatam & legē factā. Si autē in lege defecerit tenens, tunc amittet seysina, & petens seysinam recuperabit, & tenens in misericordia. Et habeat ille tale recuperare, quale habere debebit, & plegii de lege, secundū quosdam, quieti erunt de misericordia, quia sufficit q̄ eum habuerunt ad legē faciendā in curia, licet in lege facienda deficeret, ad similitudinē plegiorū de ꝑsequendo. Sed secundū alios (& melius) omnes in misericordia, quia nō sunt plegii inventi solūmodo ad veniendū ad curiā, nisi plegiatus id fecerit, ad q̄ faciendū plegios invenerit. Queri possit inter alia, cûm tenens ꝑ legem factā se defenderit à defalta, quare petens jacturā causæ suæ non incurrat, s. br̃e vel actionē, sicut ipse tenens seysinam suam si de lege, deficeret. Respondeo. Sufficit ei ꝑ cōmodo ꝑpriæ seysinæ reformatio. Esto etiam q̄ tenens primo die sum̄onitionis post defaltā et captionē terræ in manū dñi regis nō venerit, sed secūdo, tertio, vel quarto die, & petens primo die venerit, & se optulerit, & petat judicium de utraque defalta, tunc habet tenens necesse utramq̄ defendere, nisi forte ita sic[1] q̄ personaliter post captionē terram petierit per plevinam, quo caso de facili defēdere nō possit secundam sum̄onitionem et diem à justic. datū in ipsa replicatione, et ab eo recollectum &

[1] "sit," MS. Rawl. C. 160.

allowed in this part to the tenant which is not allowed to the claimant, nor conversely. But on the day of the law, either the tenant makes his law or he fails in making his law. But if he has made his law, having been as it were excused from his default on the same day he shall make his answer to the principal plea. For it suffices for a delay and for a reasonable summonition of the tenant, the intermediate time between the wagering of the law and the making of the law. But if the tenant has failed in his law, then he shall lose his seysine, and the claimant shall recover the seysine, and the tenant shall be subject to amercement. And let him have such a recovery, as he ought to have, and the sureties for his law according to some shall be acquitted from amercement, because it suffices that they presented him to make his law in the court, although he might fail to make his law, after the likeness of sureties to prosecute. But according to others (and it is the better opinion) they are all subject to amercement, for they are not sureties found only to cause him to appear in the court, unless the person pledged by them has done that, for which he has found them as sureties. It may be asked amongst other questions, when the tenant has defended himself from a default by making his law, why the claimant does not incur the loss of his cause, to wit, the writ or the action, as the tenant himself would lose his seysine, if he had failed in his law. I answer. It suffices to him for his advantage the reformation of his proper seysine. Let it be also that the tenant on the first day of the summons after the default and the caption of the land into the hand of the lord the king has not come, but on the second, third, or fourth day, and the claimant has come on the first day, and has presented himself, and claims judgment on both defaults, then the tenant is under the necessity of contesting both, unless by chance it be so that he has personally after the caption claimed the land by a plevin, in which case he cannot well contest the second summons and the day given to him by the justiciaries in his very replication, and recollected and ree

f. 366 b.

receptum. Si autē nihil ipsorū[1] intervenerit, vel per aliū petita fuerit quam ꝑ ipsum, tunc utramq̃ poterit defendere sum̄onitionem, si utraq; fuerit testificata & ꝓbata. Si autē neutra, tunc liberatur à defalta. Si autem una tantum, tunc oportet q; illam defendet eodē modo quo supra. Si autē utraq̃, & in ꝓbatione utriusq̃ defecerit, erit in defalta. Et eodem modo si in ꝓbatioue unius, & adjudicabitur seysina petenti. Si autem utramque legem fecerit, reformabitur ei seysina, ut incontinenti respondeat. Si autē primā summonitionem defenderit & cognoverit secundam, erit in defalta nisi impedimentum illegitimum allegaverit & ꝓbaverit. Et quo casu, quāvis impedimentū ꝓbatum fuerit ut legitimum, si terra capta in manum dñi regis legitimè non fuerit ad horam petita per plevinam.

9. Si defalta facta fuerit, qualiter sit procedendum.

Redeamus ad judicium post secundam defaltam, & captionem terræ, sive alterius rei, in manum dñi regis, ubi tenens omninò non cōparuerit, nec ad primum diem, nec secundum, nec tertium, nec quartū, ꝑ seipsum nec per nuntium, ut p̃dictum est, quo casu non poterit excusari defalta, & ideo sequitur judicium sub hiis verbis.

10. Irrotulatio post defaltam.

A. qui præsens est s. petiit versus B. tantam terram cum pertinentiis in tali villa ut jus suum, & B. non venit & sum̄onitus fuit aliàs & summonitio fuit testata vel non dedicta, & ita quòd terra capta fuit in manum domini regis per defaltam, quam idem B. fecit tali die & ipse iterum summonitus q; esset ad hunc diem, & non venit, & mandatum fuit vic. quòd mandaret diē captionis, et vic. mandavit diem captionis, et quòd

[1] "horum," MS. Rawl. C. 160.

ceived by himself. But if none of these things have intervened, but his land was claimed by another than himself, then he may contest both summonses, if both have been testified and proved. But if neither, then he is released from the default. But if one only, then it is incumbent that he should contest that in the same way as above. But if both, and he has failed in the proof of both, he will be in default; and in the same manner in the proof of one, and the seysine will be adjudged to the claimant. But if he has made his law in both, the seysine will be reformed to him that he may forthwith answer. But if he has contested the first summons and has acknowledged the second, he will be in default unless he has alleged and proved an illegitimate impediment. And in which case, although the impediment has been proved to be legitimate, if the land taken in the hand of the lord the king has not been legitimately claimed at the proper hour by a plevin.

9. If a default has been made, how proceedings are to be had.

Let us return to a judgment after a second default and the caption of the land or other thing into the hand of the lord the king, where the tenant has not appeared at all, neither on the first day, nor on the second, nor on the third, nor on the fourth, by himself nor by a messenger, as above explained, in which case his default cannot be excused, and therefore judgment follows in these words.

10. An enrolment after a default.

A. who is present, to wit, has claimed against B. so much land with its appurtenances in such a vill as his right, and B. has not come and has been summoned elsewhere, and the summons has been testified or has not been denied, and so that the land has been taken into the hand of the lord the king through the default, which the said B. has made on such a day, and he himself has been again summoned that he should attend on this day, and he has not come, and a mandate has been sent to the viscount that he should announce the day of caption, and he has announced the day of caption and that he was

sum̄onit[9] fuit, nec terra petita fuit p plevinā, vel si petita fuerit, non fuit petita ad horā, et ideo consideratum est q̄ A. recuperet seysinam suam, et B. f. 367. in misericordia, & fiat postmodū irrotulatio juditii sub eisdem verbis, A. optulit se quarto die versus B. de placito tali &c. ut supra, & breve de facienda seysina tale erit.

11. Breve de seysina habenda postquam quis recuperavit per defaltam.

Rex vic. salutē. Scias quòd A. de N. in curia nostra coram justiciariis nr̄is apud talē locum, p cōsiderationē ejusdē curię nostræ recuperavit seysinam suam de tanta terra cum ptinentiis in tali villa, ut de jure suo, vel ut de dote sua, versus B. de N. per defaltā ipsius B., et ideo tibi præcipimus q̄ ipsi A. de p̄dicta terra sine dilatione plenariā seysinam habere facias. Teste &c. Et ita fit missio in seysinam quasi ex secūdo decreto post captionē terræ in manū dn̄i regis, cùm illa captio sit quasi prima missio.

## Cap. II.

1. Quale competat remedium tenenti postquam amiserit per defaltam, et usque ad quod tempus.

Cum autem tenens ita amiserit per defaltam, videndum si q̄ remedium competat ei qui sic amisit, & quale. Et sciendum q̄ competit ei remedium, & recuperare per breve de recto omni tempore si placitare voluerit, quousque tenens posuerit se in magnam assisam, ita q̄ quatuor milites summoniti fuerunt ad eligendum duodecim secundum quosdam, & secundum alios quousque duodecim electi fuerint. De hoc autem contentio fuit inter veteres, & eodem modo (ut videtur) donec tenens duellū vadiaverit, si duellū elegerit: ad paria enim judicatur in multis magna assisa et duellū, & tunc vero deinceps non habebit quis aliud recuperare, quia abjudicabitur sibi & hæredibus suis seysina im-

summoned, and the land was not claimed by a plevin, and therefore it was resolved that A. should recover his seysine and B. should be amerced, and let the judgment be afterwards enrolled in these words: A. presented himself on the fourth day against B. in such a plea &c. as above; and the writ for giving seysine will be of this kind. f. 367.

11. A writ for having seysine after a person has recovered through a default.

The king to the viscount greeting. Know thou, that A. de N. in our court before our justiciaries in such a place, by the resolution of our said court has recovered his seysine of so much land with its appurtenances in such a vill, as of his own right, or as of his dower, against B. de N. through the default of the said B., and accordingly we enjoin you that you cause the said A. to have plenary seysine without delay of the said land. Witness &c. And so mission into seysine is made as it were upon a second decree after the caption of the land into the hand of the lord the king, since that caption has been as it were the first mission.

## Chapter II.

1. What sort of remedy is allowable to a tenant after he has lost through default, and up to what time.

But when a tenant has lost through default, it is to be seen if any remedy is allowable to him, who has so lost, and what sort of remedy. And it is to be known, that he is entitled to a remedy and to recover through a writ of right at all times, if he should wish to sue, until the tenant has put himself upon a great assise, so that four knights have been summoned to choose twelve according to some, and according to others until twelve have been chosen. But respecting this there has been a contention amongst the older men, and in the same manner (as it seems) until the tenant has wagered a duel, if he has chosen a duel: for in many things a great assise and a duel are judged alike, and then indeed from that time he shall not have another recovery, because the seysine will be judged away from him and his heirs for ever. But

perpetuum. Propter dissensum vero antiquorum non poterit teneri aliquod certum quid fieri debeat, si defalta facta fuerit cûm quatuor milites sum̄oniti sint ad eligendum, cum quidam dicant sic, quidam contrarium. Sed tamen q recuperare suum debeat habere in hoc ultimo casu, ꝑbatur in rotulo de termino P. anno regis H. decimo sexto in com̃ Oxoñ, de Fray Pinchard,[1] ubi ipse nec hæredes sui præcisè fuerint abjudicati, sed quòd haberent tale recuperare, quale habere deberent. Sed quòd nullum habere debent postquàm duodecim electi fuerint, sed ex toto abjudicantur, probatur in rotulo de termino Sancti Michaelis anno regis Henrici quarto incipiente quinto in comitatu Buck., de Johanne filio Rowlandi. Et ad hoc concordant alii plures casus. Itē habere poterit remedium tenens qui amisit, si fraudulenta deceptio petentis intervenit, ubi nulla omnino summonitio facta fuit, mentitur tamen fieri, & hoc detecto nec captio aliqua nec abjudicatio per defaltam. Et si judicium reddatur in hoc casu pro petente, quicquid actum fuerit revocabitur secundum quod superius dicetur.[2] Item habebit tenens suum recuperare, ubi in absentia sua cum peregre profecturus fuerit abjudicata fuerit ei seysina, cum summonitione præventus non fuerit, ut supradictum est. Sed per quale breve videndum, quia justic. non sunt in culpa, nec etiam petens, cùm hoc factum sit per imperitiam summonitorum, qui testati sunt legitimam esse summonitionem. Via igitur melior est (ut videtur) q tenens dicat se esse injuste disseysitum quamvis cum judicio, quia injuste, eo q per
L 367 b. injustum judicium. Et unde cûm petens qui recupera-

[1] "Punchard," MS. Rawl. C. 160. | [2] "dicitur," MS. id.

on account of the dissension amongst the ancient authorities nothing certain can be maintained as to what should be done, if the default has been made, when the four knights have been summoned to choose [the twelve], since some say so, and others the contrary. But nevertheless, that he ought to have his recovery in this last case is proved in the roll of Easter term in the sixteenth year of king Henry in the county of Oxford, concerning Fray Pinchard, where neither he nor his heirs were precisely adjudged to be out of court, but that they should have such a recovery as they ought to have. But that they ought not to have any recovery after the twelve knights have been elected, but should be adjudged totally out of court is proved in the roll of St. Michael's term in the fourth and fifth years of king Henry in the county of Bucks, concerning John the son of Rowland. And with this many other cases accord. Likewise the tenant, who has lost, may have a remedy, if a fraudulent deception has intervened on the part of the claimant, where no summons at all has been made, but he falsely says that it has been made, and upon this having been detected there is neither any caption nor abjudication through default. And if judgment be rendered in this case for the claimant, whatever has been done will be revoked, according to what has been explained above. Likewise the tenant will have his recovery when in his absence, if he has gone on a journey abroad, his seysine has been adjudged away from him, when he has not been anticipated by a summons, as explained above. But by what writ is to be seen, because the justiciaries are not in fault, nor even the claimant, when this has been done through the inexperience of the summoners, who have testified to a legitimate summons. The better way therefore is (as it seems), that the tenant should say, that he has been unjustly disseysed, although with a judgment, because he has been unjustly disseysed, inasmuch as he has been so through an unjust judgment. And hence when the claimant who has recovered shall answer to the f. 367 b.

vit responderit ad assisam & seysinam, vocare poterit curiam regis ad warrantum, q̃ quidem decepta fuit, per quam quidem poterit talis processus & tale judicium revocari.

## Cap. III.

1. Qualiter sanatur defalta per servicium domini regis.

Ante judicium vero poterit defalta sanari multis modis, sicut judicium cûm factum fuerit revocari. Inprimis per servicium domini regis, si in servicio suo fuerit, ita quòd mittere non possit nec venire, quia servicium domini regis nulli debet esse damnosum, nec etiam ei ita ad commodum, quòd alteri sit injuriosum. Brevia autem de warrantia de servitio domini regis, sub hac forma concepta sunt. Varia sunt enim genera defaltarum. Aut fit defalta coram justic. itinerantibus, aliquando pro communi summonitione, & aliquando pro placito terræ, quo casu fiant brevia in hac forma.

2. Brevia, quæ excusant per servitum domini regis.

Rex dilectis & fidelibus suis justiciariis itinerantibus in tali comitatu salutem. Sciatis quòd talis fuit in servitio nostro tali die apud talem locum, ita quòd in itinere vestro coram vobis esse non potuit tali die pro communi summonitione. Et ideo vobis mandamus, quòd occasione communis sive generalis summonitionis coram vobis factæ de militibus & liberè tenentibus & aliis in itinere vestro, ipsum talem non ponatis, nec poni permittatis in defaltam, quia absentiam suam quoad hoc ei warranti-zamus, vel aliter: quòd talis fuit in servitio nostro &c. ut supra, ita quòd coram vobis esse non potuit in loquela, quæ est inter ipsum & talem de tanto terræ cum pertinentiis in tali villa. Et ideo vobis mandamus, quòd propter absentiam suam ad diem illum coram vobis non ponatur in defaltam nec in aliquo sit perdens, quia diem illum ei warrantizamus. Et eodem modo quo dies warrantizantur,

assise and the seysine, he may vouch the court of the king to warrant, that it has been deceived, through which indeed such a proceeding and such a judgment may be revoked.

## Chapter III.

1. How a default through the service of the lord the king may be cured.

But before judgment a default may be cured in many ways, as a judgment when it has been made may be revoked. In the first place through the service of the lord the king, if he has been in his service, so that he could not send nor come, because the service of the lord the king ought not to be damaging to any one, nor on the other hand so advantageous to him that it should be injurious to another person. But writs of warranty concerning the service of the lord the king are drawn up in this form. For there are various kinds of defaults. A default is either made before the justiciaries itinerant, sometimes for a common summons, sometimes for a plea of land; in which case let the writs be in this form.

2. Writs, which excuse for the service of the lord the king.

The king to his beloved and faithful justiciaries itinerant in such a county greeting. Know ye that so-and-so was in our service on such a day at such a place, so that he could not appear before you on your iter on such a day for a common summons. And accordingly we command you, that on the occasion of a common or general summons made before you of the knights and free tenants and others in your iter, you do not place him nor allow him to be placed in default, because we warrant his absence as regards this matter, or otherwise: that so-and-so was in our service &c. as above, so that he could not appear before you in the trial which is between him and so-and-so concerning so much land with its appurtenances in such a vill. And therefore we command you, that on account of his absence on that day before you he be not placed in default, nor be a loser in any respect, because we warrant that day to him. And in the same

poterit terminus warrantizari ex causa, scilicet à tali die usque ad talem diem, & sic majoris causæ occupatio excusat aliquem et defendit à pœna contumaciæ, sicut facit adversa valitudo, pœnam enim contumaciæ non patitur quem adversa valitudo, vel majoris causæ occupatio defendit. Item sicut locum habet warrantia per breve domini regis in minoribus curiis coram justiciariis de curiis domini regis, ita locum habebit de curiis domini regis in comitatu, vel in curiis baronum, vel aliorum qui curias habent de placitis et sectis, et aliis quæ in comitatibus vel in curiis placitari possunt vel terminari, et tunc sic: Scias quòd A. de N. fuit in placito, vel in quadam assisa vel jurata (vel alia de causa, secundum quod necessitas exigerit) in curia nostra coram justiciaŕ nostris apud talem locum tali die per præceptum nostrum, ita quòd ad diem illum coram te in comitatu tuo esse non potuit pro loquela, quæ est in eodem comitatu tuo inter ipsum talem et talem de tanto terræ, vel de qualicunque alia re, vel aliter si terminus warrantizari
f. 368. debeat: Scias q talis &c. fuit coram nobis in placito tali die, et in crastino et tertio et quarto die, vel à tali die usque ad talem, vel tali die ita quod tali die coram te esse non potuit, nec in crastino, ita quòd totum tempus computetur, quo fuit coram justic. in curia domini regis, et omnes dietæ in veniendo versus patriam, ut sciri possit q ita legitima sit excusatio de toto tempore illo, et tunc dicatur: et ita q infra terminum illum coram te in comitatu tuo in tali placito esse non potuit. Et ideo tibi præcipimus quòd propter absentiam suam infra terminum illum coram te in comitatu tuo non ponatur in defaltam, nec in aliquo

manner in which the day is warranted, a term may be warranted from a cause, to wit, from such a day to such a day, and so the occupation of a more important cause excuses a person and defends him from the penalty of contumacy, as does adverse health, for a person does not suffer the penalty of contumacy, whom adverse health or the occupation of a more important cause defends. Likewise just as a warrant by a writ of the lord the king has place in the minor courts before the justiciaries of the courts of the lord the king, so it will have place from the courts of the lord the king in the county court and in the courts of the barons, or of others who hold courts of pleas and sects, and of other matters which may be pleaded and terminated in the county courts or in the other courts, and then thus: Know thou, A. de N. was in a plea, or in a certain assise or jury (or for some other cause, according as necessity has required) in our court before our justiciaries at such a place on such a day through our precept, so that on that day he could not be in thy court before thee for the trial, which is in thy said county court between the said so-and-so and such a person concerning so much land, or concerning any other thing whatsoever, or otherwise if a term ought to be warranted: Know thou that so-and-so &c. was present before us in a plea on such a day, and f. 368. on the morrow, and on the third day, and on the fourth day, or from such a day up to such a day, or on such a day so that on such day he could not appear before you, nor on the morrow, so that the whole time be computed in which he was in the presence of the justiciaries in the court of the lord the king and all the days' journeys in coming towards his country, that it may be known that thus the excuse for the whole time is legitimate, and then let it be said: and so that he could not be within that term before you in your county court in such a plea. And therefore we enjoin you that he be not placed in default on account of his absence within that term before you in your county court, nor be a loser in

sit perdens, quia terminum illum ei warrantizamus. Vel aliter, quòd propter absentiam suam ad diem illum vel infra terminum non ponant eum in defaltam, nec in aliquo coram te occasionetur per quod sit perdens, quia diē illum sive terminum illum ei warrantizamus. Teste &c. Et eodem modo scribatur ballivis curiarum. Et qualiter formari debeat breve satis perpendi poterit ex præmissis. Item possunt justiciarii scribere eodem modo vicecomitibus et ballivis curiarum nomine proprio, sed tamen ex parte domini regis hoc modo: Scias vel sciatis &c. ut supra. Et ideo tibi vel vobis mandamus ex parte domini regis, quòd propter absentiam suam &c. ut supra. Et sic excusat magis magis adjutorium [1] aliquem à defalta in juditio minori. Et eodem modo excusat consimile adjutorium [2] vel æquale, ut si justic. de banco suo nomine scripserint justic. itinerantibus, vel è contrario: licet par in parem non habet imperium. Et tunc dicatur, A. B. et socii sui itinerantes in tali cōm. vel justic. de banco dilectis amicis et sociis suis A. B. et sociis suis itinerantibus in tali cōm (secundum quod se ipsos velint præponere vel postponere in mandato) & tunc, sciatis ut supra. Et notandum quòd dūs rex nec alius poterit aliquem sic warrantizare, vel defaltam sanare, quòd quis aliquid lucretur ab adversario per absentiam, sed quòd indempnis observetur. Item nec quòd judicium differetur [3] de aliquo quod sit contra pacem domini regis, sicut de utlagaria, & hujusmodi, sicut de Richard Syward in comitatu Gloc. inter placita quæ sequuntur regem, anno regni sui tricesimo tertio, & ita obtinet

[1] "excusat majus auditorium," MS. Rawl. C. 160 & 159.
[2] "consimile auditorium," MSS. eadem.
[3] "differatur," MS. Rawl. C. 160.

any respect, because we warrant to him that term. Or otherwise, that they should not on account of his absence on that day, or within that term, place him in default, nor that he should be prejudiced before you in any way that he should be a loser, because we warrant to him that day or that term. Witness &c., and in the same way let writings be sent to the bailiffs of the courts. And in what manner the writ should be drawn up may be sufficiently understood from the premises. Likewise the justiciaries may write in the same manner to the viscounts and bailiffs of the courts in their own name, but nevertheless on the part of the lord the king, in this manner. Know thou or know ye &c., as above. And accordingly we command thee or you on the part of the lord the king, that on account of his absence &c. as above. And so a superior auditory excuses a person from a default in an inferior court. And in the same way a similar or equal auditory excuses, as for instance if the justiciaries of the bench have written in their own name to the justiciaries itinerant or contrariwise, although equal has no empire over equal. And then let it be said, A. and B. and their associates itinerant in such a county, or the justiciaries of the bench to their beloved friends and associates A. and B. and their associates itinerant in such a county (according as they wish to place themselves first or last in order in the mandate), and then know ye as above. And it is to be noted that neither the lord the king nor any other person can so warrant any one or cure a default, that any one should gain anything from his adversary through his absence, but only that he should be kept from loss. Likewise nor that a judgment should be deferred on any matter which is against the peace of the lord the king, as concerning an outlawry and such like, as concerning Richard Syward in the county of Gloucester, amongst the pleas which follow the king in the thirty-third year of his reign, and so it prevails that

quòd major curia et æqualis excusat et defendit à defalta, minor autem nunquam in majori.

3. Qualiter excusatur absentia multis modis.

In fine notandum, quòd sola absentia facit contumacem, nec probari debet, licet sufficit sola absentia, nisi fuerit rationabiliter excusata quòd necessaria fuerit, et non voluntaria, secundum quod necesse ponitur pro inevitabili, et ideo necessitas excusat, non voluntas, scilicet non nolle, sed impotentia per necessitatem. Necessitas autem aliquando præcedit summonitionem et excusat à defalta, quandoque concomitatur summonitionem et quandoque sequitur et evenit post summonitionem, et quandoque provenit excusatio non ex necessitate. Procedit[1] aliquando sum̄onitionem necessitas et excusat, ubi licet sum̄onitus fuerit quis legitime, ad domicilium tamen venire non potest, nec mittere, nec sibi providisse poterit propter necessitatem præcedentem summonitionem, ut si se essoniare posset vel facere attornatum, ut si ante sum̄onitionem captus fuerit quis
f. 368 b. et imprisonatus, & ita in prisona arctatus quòd venire non possit, nec mittere, secundum quod causa fuerit civilis vel criminalis. Item nec sibi providisse ut supradictum est. Itē eodem modo si ante sum̄onitionem effectus sit non sanæ mentis q̄ summonitioni consentire non possit nec sum̄onitionem recipere. Item si tam gravi infirmitate detentus sit ante sum̄onitionem q̄ discernere non possit, nec aliud cogitare nisi sit dolor & pœna.[2] Item si in servitio dñi regis detentus fuerit, non affectans fraudulenter illam necessitatem serviendi, nec procurans, cûm sic commode venire non possit, nec mittere nec sibi providisse, excusatur ex tali necessitate,[3] et talis necessitas multotiens concomitatur summonitionem & præcedat,[4] & ista necessitas

[1] "Præcedit," MS. Rawl. C. 160.
[2] "nisi quid sit dolor et pœna," MS. Rawl. C. 160.
[3] "a tali necessitate," MS. id.
[4] "præcedit," MS. id.

the superior and the equal court excuses and defends a person from a default, but the inferior never so in the superior court.

3. In what manner absence in many ways is excused.

In the end it is to be noted that absence alone makes a person contumacious, nor ought it to be proved, although absence alone suffices, unless it has been reasonably excused that it was necessary, and not voluntary, according as necessary is used to signify what is inevitable, and accordingly necessity excuses, not the will, to wit, not unwillingness, but want of power through necessity. But necessity sometimes precedes a summons and excuses from default, sometimes it accompanies it, and sometimes it follows it and happens after the summons, and sometimes the excusation proceeds not from necessity. The necessity sometimes precedes and excuses the summons, where, although a person has been legitimately summoned, he cannot come nor send to his domicile, nor will he be able to provide for himself on account of some necessity preceding the summons, as if he might have essoined himself or have constituted an attorney, as for instance, if before the summons a person has been captured and imprisoned, and so closely confined in prison that he cannot come nor send, according as the cause be civil or criminal. Likewise nor to have provided for himself as aforesaid. Likewise in the same manner, if before the summons he has been rendered of unsound mind, so that he could not consent to the summons, nor receive the summons. Likewise if he be detained by so grievous an infirmity before the summons that he could not discern, nor think of anything else unless it be suffering and pain. Likewise if he has been detained in the service of the lord the king not affecting fraudulently the necessity of serving him, nor procuring it, when thereby he could not conveniently come, nor send, nor provide for himself, he is excused upon such necessity, and such necessity very frequently accompanies the summons and precedes it, and that ne- f. 368 b.

excusat à defalta, si probetur, & à pœna, & impedit judicium. Et si continuæ fuerint hujusmodi necessitates, ita quòd infra quartū diem post defaltam ꝑponi non possint nec ꝑbari, & ꝑcedat judicium contra tenentem, si post judicium ꝑponantur et ꝑbentur, judicium et quicquid actum fuerit revocabitur.

Eodem modo excusatur, si quis peregrè ꝑfectus fuerit ante sum̄onitionem q̄ sibi providere non potuit ut supra. Item est quædam necessitas superveniens & sequens sum̄onitionem, ut si summonitus legitimè post summonitionem inciderit in casus fortuitos, qui prævideri non poterunt, de quibus paulò ante dictum est. Et in quibus casibus omnibus, si petens docere possit impedimentum esse illegitimum & necessitatem non legitimam vel nullam, vel aliter esse quàm tenens proposuerit: ex tali insinuatione sive negatione fit res dubia, quo casu oportebit quòd veritas requiratur, & secundum hoc fiat judicium vel non defaltarum, vel si forte factum fuerit, revocabitur vel tenebit. Sed quid si ante judicium de defalta vel post, ostenderit tenens breve domini regis de warrantia, quòd fuit tali die in servitio suo in forma supradicta, quòd esse non potuit coram justiciariis eodem die in judicio, cùm forte in nullo servitio domini regis extiterit, quia visus fuit eodem die coram justiciariis suis qui habent recordum, & inde contumaciter recessit, ita q̄ judicium præcessit contra ipsum de defalta, vel q̄ alibi fuit longe à loco ubi esse debuit in servitio, quod petens sit statim paratus probare. Item etsi in servitio fuerit, potuit sibi ante servitiū ꝑvidisse, vel si in servitio fuerit nec potuit venisse

cessity excuses from default, if it be proved, and from punishment, and impedes a judgment. And if necessities of this kind have been continuous, so that within the fourth day after the default they cannot be propounded nor proved, and judgment should proceed against the tenant, if after judgment they should be propounded and be proved, the judgment and whatever has been done shall be revoked.

In the same manner he is excused, if any one has set out on a journey abroad before the summons, so that he could not provide for himself. Likewise there is a certain supervenient necessity, which follows the summons, as if a person legitimately summoned has after the summons fallen into some fortuitous casualties which could not be foreseen, concerning which we have spoken a little above. And in all of which cases, if the claimant can show that the impediment is illegitimate and the necessity not legitimate or null, or otherwise than the tenant has propounded, by such an insinuation or denial the matter is rendered doubtful, in which case it will be incumbent that the truth should be sought out, and according to this let there be a judgment or not of the defaults, or if by chance it has been made, it shall be recalled or it shall hold good. But if before the judgment concerning the default or after it the tenant shall have shown the writ of the lord the king concerning warranty, that he was on such a day in his service, in the form above stated, so that he could not be before the justiciaries on the same day in court, when by chance he has not been in any service of the lord the king, because he was seen on the same day before his justiciaries who have a record, and he has thence contumaciously withdrawn, so that judgment has proceeded against him through his default, or because he was elsewhere at a distance from where he ought to have been in service, which the claimant is forthwith prepared to prove. Likewise although he may have been in the king's service he might have

nec sibi providisse, tamen potuit misisse, quia præsens fuit tota die cum ipso rege, quæro an tale testimoniū ipsius regis admittat probationem in contrarium, cùm petens excipiat (ut prædictum est) & paratus sit ꝑbare exceptionem? videtur quòd sic, quamvis tale testimonium ipsius dñi regis maximam inducat præsumptionē, vera tamen ꝑbatio debet vincere illum, que nulla alia erit, nisi quòd probetur dominum regum & consilium suum per falsam suggestionem esse deceptum, rex enim decipi possit cùm sit homo, Deus autem nunquàm, cùm sit Deus. Et quo casu cûm dominus rex super hoc fuerit interpellatus in eadem perstiterit voluntate quòd velit tenentem esse defensū injuria, cùm teneatur justiciam totis viribus defensare, extunc erit injuria ipsius domini regis, nec poterit ei necessitatem aliquis imponere quòd illam corrigat & emendet nisi velit, cùm
f. 269. superiorem non habeat nisi Deum, et satis erit illi pro pœna quòd Deum expect ultorem. Et si justiciaꝛ sui necessitatem imponant reg [1] quòd judicium reddant, in hoc casu vel consimilibus ita reddant juditium, ꝙ non pro juditio, sed quia dñs rex ita vult, et inde sequitur, quòd juditium potius voluntarium sit quàm justum, si dici debeat juditium. Et quicquid dicatur de facto regis in eo quod est rex, & perinde factum juditium disputari non debet, nec factum à quoquam judicari nec revocari poterit, cùm sit justum. Si autem factum injustum fuerit, perinde non erit factum regis. Et cûm non sit factum regis quia injustum, inde disputari poterit, et factum judicari, sed idem emendari non poterit, nec

[1] "et si justiciariis suis necessitatem imponat rex," MS. Rawl. C. 160 et 159, et Reg. 9. E. xv.

provided for himself before the service, or if he should have been in his service and could not have come nor provided for himself, nevertheless he could have sent, because he was present during the whole day with the king himself, I ask whether such testimony of the king himself admits of proof to the contrary, when the claimant excepts (as aforesaid), and is prepared to prove his exception? It seems in the affirmative, although such testimony of the king himself induces the strongest presumption, but a true proof ought to overcome it, which will be nothing else than the proof that the lord the king and his council have been deceived by a false suggestion. For the king may be deceived since he is a man; but God never, since he is God. And in which case when the lord the king having been interpellated in this matter has persisted in the same desire that he wishes the tenant to be defended from injury, since he is bound to maintain justice with all his power, it will be henceforth an injury of the lord the king himself, nor can any one impose upon him the necessity to correct and amend it unless he wills it, since he has no superior except God, and it is sufficient for him as pun- f. 369.
ishment that he should expect God as the avenger. And if the king should impose upon his justiciaries a necessity, that they should render judgment, in this case or in consimilar cases they should so render judgment, that it be not taken for a judgment but because the king so wills it, it follows hence that the judgment is rather wilful than just, if it ought to be called a judgment. And whatever may be said of the act of the king inasmuch as he is king, the judgment accordingly made ought not to be disputed, nor can the act be judged nor revoked by any one, when it is just. But if the act shall be unjust, it will be accordingly not the act of the king. And since it is not the act of the king because it is unjust, it may thenceforth be disputed, and the act may be judged, but the said act cannot be amended nor re-

revocari sine eo. Item notandum in fine quòd excusatur contumacia et defalta sine necessitate, sola voluntate, cùm sum̄onitus à non suo judice venire non teneatur. Et excusatur à defalta ante juditium & post, cùm fuerit probata. Et eodem modo si ꝑcedat juditiū cum falso procuratore, quia cum non suo judice, vel falso procuratore, juditium nullum, controversia nulla. Item quia venire non tenetur, cùm nullam habeat sum̄onitionem, vel minus legitimam. Et quo casu non habet necesse venire ut respondeat de placito, sed ut alleget & probet summonitionem nullam vel minus legitimam. Et eodem modo si peregre profectus fuerit ante summonitionem sum̄onitione non præventus ut supradictum est.

4. Si post defaltam capiatur dies amoris.

In fine notandum quòd, si post defaltam factam ante juditium capiatur dies amoris, vel translata sit loquela ab uno juditio ad aliud, ad instantiam et ꝑcurationem petentis, qui lucrari deberet per defaltam et hoc simpliciter, nulla facta mentione de defalta, videtur per hoc quòd petens tacitè renunciat defaltæ, et ideo ad defaltam ulteriùs regressum non habebit. Et si hoc non fuerit per petentem sed per officium judicis vel ex voluntate regis, vel ex necessitate aliqua, vel forte ad procurationem tenentis, aliud erit. Et si dies amoris capi debeat, expedit petenti quòd mentionem faciat de defalta, & q̄ diem amoris capiat sub tali protestatione, q̄ si amor se non capiat, salvus sit ei regressus ad defaltam, et durante placito & defalta in eodem statu in quo fuit die quo dies amoris captus fuit, & si talis forte non fiat protestatio, et dies amoris

voked without him. Likewise it is to be noted in the end that contumacy and default without necessity are excused, though wilful, when a person upon a summons from one who is not his proper judge is not bound to come. And he is excused from default before judgment and after it, when it has been proved. And in the same way if judgment proceeds with a false proctor, because with a judge who is not the proper judge or with a false proctor there is no judgment, there is no lawsuit. Likewise because he is not bound to appear, since he has had no summons or not a legitimate one. And in which case he is not under the necessity of coming to answer concerning the plea, but to allege and prove that the summons is null or not legitimate. And in the same manner, if he has set out on a foreign journey before the summons, not anticipated by the summons as above said.

4. If after a default a day of love be taken.

Finally it is to be noted that, if after a default has been made a day of love be taken before judgment, or the cause be transferred from one court to another court, at the instance and procuration of the claimant, who ought to gain through the default, and this simply, no mention having been made of the default, it seems thereby that the claimant tacitly renounces the default, and therefore he cannot have any further recourse to the default. And if this be not done through the claimant, but through the office of the judge and from the will of the king, or from some necessity, or by chance at the procuration of the tenant, it will be different. And if a day of love ought to be taken, it is expedient for the claimant that he should make mention of the default; and that he should take the day of love under such a protest, that if love shall not take him, a recourse to the default may be open to him, the plea and the default continuing in the same state in which it was on the day on which he took a day of love; and if such protest by chance be not made, and the day of love has not taken effect, if the tenant

effectum non habuerit, si tenens ad alium diem defaltam fecerit, vix illam salvare poterit. Item erit si petens post defaltam se essoniaverit.

5. Quis possit remittere defaltam.

Et quærendum quis possit remittere defaltam? dominus principalis, vel ejus attornatus, vel warrantus cûm warrantizaverit? Et sciendum quòd ille dominus principalis qui lucrari possit per defaltam: de attornato vero & warranto dubitari posset. Sed si remiserint, videtur quòd tenet remissio, et sibi imputari poterit qui tales elegit.

## Cap. IV.

1. Si in actione mixta facta sit defalta.

Si autem actio mixta fuerit, & tenens defaltam fecerit sicut in partitione hæreditatis, ubi participes & cohæredes agunt ad divisionem hæreditatis inter se, & quilibet actor, & quilibet reus, licet talis actio sit tam in personam quã in rem, nullum fiat attachiamentum de persona, quamvis hoc fieri posset quadam ratione, eo quòd est mixta & in persona; sed capietur terra in manum domini regis per magnum cape, ut supra, sicut in proparte sororum, vel alibi, ubi res patitur divisionem inter participes.

f. 369 b.

2. Si in uno brevi actio duplex.

Si actio fuerit duplex in uno brevi & ubi duę concurrunt actiones, scilicet in personam & in rem, primò quòd quis sit ad respondendum quo warranto teneat aliquam rem, & postea addatur in fine, quam rex clamat ut jus suum, vel eschaetam suam, vel de antiquo dominico suo, vel de hujusmodi, licet utraq̃ actio inutilis sit in se, si subtiliter inspiciatur, quoad

has made default upon another day, he can scarcely save that default. The same thing will happen if the claimant after a default has essoined himself.

5. Who can remit a default.

And it is to be asked who can remit a default? the principal party in the suit, or his attorney, or a warrantor when he has warranted? And it is to be known, that the principal party in the suit, who may gain by the default, but concerning an attorney or a warrantor it may be doubted. But if they have remitted it, it seems that the remission holds good, and he must impute it to himself, who has chosen such persons.

## Chapter IV.

1. If default be made in a mixed action.

But if there be a mixed action and the tenant has made default, as in the partition of an inheritance, where coparceners and coheirs sue for the division of an inheritance amongst themselves, and each party is a plaintiff and each is a defendant, although such an action is as well against the person as against the thing, let there be no attachment of the person, although this may be done in a certain manner, inasmuch as the action is mixed and against the person, but let the land be taken in the hand of the lord the king by a great *cape* as above, as in a suit for the proportionate share of sisters, or elsewhere, where the estate admits of division amongst the parceners. f. 369 b.

2. If there be a double action in one writ.

If there shall be a double action in one writ, and when two actions concur, to wit, against the person and against the thing, in the first place that a person be called on to answer by what warrant he holds any estate, and it be afterwards added at the end "which the king claims as "his right, or as his escheat, or as of his ancient domain," or such like, although either action is useless in itself if it be inspected with subtlety, as regards the obtaining the

seysinam consequendam, tamen si tenens defaltam fecerit & concurrat utraque districtio, scilicet attachiamentum, eo quòd una actio personalis est, & alia realis, tamen tenenda est illa districtio quæ magis ligat, & quæ litem & litis protractionem magis restringit, scilicet quòd capiatur terra in manum domini regis per magnum cape, secundum quod superius dicitur.

3. Si petens defaltam fecerit et tenens venerit, si petens possit salvare.

Esto etiam quòd petens defaltam fecerit, & tenens venerit, & breve, offerente se liti tenente quarto die, recedet tenens quietus de brevi illo, & petens in misericordia. Sed si defaltam fecerit ante quartum diem, in quarto die, vel post, ante judicium defaltæ, bene poterit sanare defaltam suam, excusationibus supradictis, & etiam si juditium factum fuerit, revocabitur, probata excusatione, & etiam quousque in magnam assisam se posuerit ita quòd quatuor milites sum̄oniti sunt ad eligendum, ut supra de tenente, nō enim licet in hac parte reo, quod actori non liceat Et quòd tenens remedium habere poterit de defalta & antequam duodecim eligantur, & post judicium, pro batur de termino Paschæ anno regis Henrici decimo quarto, de Paulino de Wychelesse & Stephano de Fredewylle in comitatu Oxoñ in præsentia Stephani de Seygrave & Radulphi Cicistrensis episcopi tunc cancellarii, & unde Paulinus fuit petens, & sanavit defaltam postquàm quatuor milites summoniti fuerunt ad eligendum duodecim prætextu servitii domini regis.

4. Si petens nonvenerit, nec tenens se essoniaverit.

Item si petens non venerit, nec breve ad primum diem, & tenens se essoniaverit, cûm non sit cui respondeatur, nec autoritas, nec warrantus procedendi, non absolvetur tenens omnino à juditio, sed dicatur

seysine, nevertheless, if the tenant has made default and both distraints concur, to wit, an attachment inasmuch as one action is personal and the other real, nevertheless, that distraint is to be maintained which is the more binding, and which restrains the more the suit and the protraction of the suit, to wit, that the land be taken into the hand of the lord the king by a great *cape*, according to what has been said above.

3. If the claimant has made default and the tenant has come, if the claimant can save it.

Let it be also that the claimant has made default, and the tenant has come, and the writ, upon the tenant offering himself on the fourth day to contest the suit, the tenant shall retire acquitted from that writ, and the claimant shall be amerciable. But if he has made default before the fourth day, upon the fourth day or, after it, before sentence of default, he may well cure his default by the excuses aforesaid, and even if judgment has been pronounced, it shall be recalled on proof of his excuse, and even until he has put himself upon a great assise so that four knights have been summoned to elect, as above concerning a tenant, for what in this part is not allowable to a plaintiff is not allowable to a defendant. And that a tenant may have a remedy upon a default, and before the twelve are chosen, and after a judgment, is proved in Easter term in the fourteenth year of king Henry, concerning Paulinus de Wychelesse and Stephen de Fredewylle in the county of Oxford, in the presence of Stephen de Segrave and Ralph, bishop of chichester, then Chancellor, and wherein Paulinus was the plaintiff and cured his default after four knights had been summoned to elect twelve upon the pretext of the service of the lord the king.

4. If the claimant has not come nor the tenant has essoined himself.

Likewise if the claimant has not come nor the writ on the first day, and the tenant has essoined himself, when there is no one to whom an answer should be made, nor any authority nor warrantor for proceeding, the tenant shall not be absolved altogether from a

f. 370. ei quod eat sicut venit. Et eodem modo fiat de essoniatore suo, si forte fuerit essoniatus. Et eodem modo si petens venerit vice versa, & non breve, nec tenens: dicatur ei illud idem q̃ dicitur tenenti & essoniatori suo in casu consimili. Si autē petens & tenēs venerint vel se essoniaverint ambo vel unus eorum, tunc dari poterit alius dies, etiam si breve non venerit, & dicatur petenti vel essoniatori suo, quòd ad alium diem faciat venire breve suum, & mandabitur vicecomiti ex parte regis &c. Præsumitur enim eo quòd ambo apparent vel se essoniant, q̃ vicecom̃ susceperit breve, & q̃ tenens sum̃onitus fuit, eo tamen excepto à p̃missis, q̃ si ambo p̃sentes fuerint petens & tenens, & bŕe non venerit, si tenens se offerat, & petat juditium, si debeat sine bŕe respondere, quietus recedet de brevi illo, si diē suum bene intellexerint. Si autem ambo erraverint et maturiùs venerint quàm deberent, nihilominus tenebit sum̃onitio & breve.

5. Si unus ex pluribus tenentibus, qui tenent in commune, defaltam fecerit, et alius essoniatus fuerit, et tertius comparucrit.

Item esto quòd unus petens plures implacitaverit tenentes, duos, vel tres, vel plures qui tenuerint in com̃uni, & unus eorum defaltam fecerit, & alius essoniatus fuerit, & tertius comparuerit,[1] nullus sine alio respondebit. Dabitur igitur alius dies ei qui præsens est personaliter, ei vero qui[2] essoniatus est per essoniatorem suum, contra ipsum vero qui defaltam fecerit procedatur ad defaltam per magnum cape, vel parvum, secundum q̃ ante de defalta comparuerit in curia vel non. Et ita q̃ non tota res quæ petitur capiatur in manum domini regis pro defalta unius, sed quatenus cōtingit portionem suam, scilicet medietas rei petitæ,

[1] "ante defaltam comparuerit," MS. Rawl. C. 160.

[2] "et ei qui," MS. id.

judgment, but let it be said to him, that he should go away as he came. And in the same way let it be done in regard to his essoiner, if by chance he has been essoined. And in the same way if the claimant has come *vice versâ*, and not the writ, nor the tenant: let there be said to him the same as is said to the tenant and his essoiner in a similar case. But if the claimant and the tenant have come, or both have essoined themselves, or one of them, then another day may be given, even if the writ has not come, and it may be said to the claimant or his essoiner that he should cause his writ to come on another day, and a mandate shall be sent to the viscount on the part of the king, &c. For it is presumed, inasmuch as both appear or essoin themselves, that the viscount has received the writ, and that the tenant has been summoned, with this exception from the premises, that if both should be present, the claimant and the tenant, and the writ has not come, if the tenant has presented himself and claims judgment, if he ought to answer without a writ, he will retire acquitted from that writ, if they have well understood their day. But if both have erred and come sooner than they ought, neve rtheless the summons and the writ shall bind them. f. 370.

5. If one out of several tenants, who hold in common has made default, and another has been essoined, and a third has appeared.

Likewise let it be, that one claimant has impleaded several tenants, two or three or more, who hold in common, and one of them has made default, and another has been essoined, and a third has appeared, none shall answer without the other. Another day shall therefore be given to him who is present personally, and to him who has been essoined by his essoiner, but against him who has made default let proceedings be had to a default by a great *cape* or a little *cape*, according as he has before appeared upon his default in the court or not. And so that not the whole estate which is claimed should be taken into the hand of the lord the king on account of the default of one, but as far as it touches his portion, to wit, the moiety of the estate claimed, or the third

vel tertia pars, vel quarta, sive in propria persona litigaverit sive per attornatum, quia per defaltam attornati amittit dominus litis, sive omnes attornatum fecerint sive unus, & bene poterit unus ex pluribus per defaltam partem suam amittere sine participibus suis, licet sine eis ab initio non teneatur respondere. Et si omnes tenentes unum fecerint attornatum, per defaltam unius attornati poterunt omnes amittere. Item esto quòd unus ex pluribus participibus petentibus defaltam fecerit, & alii omnes in propria persona comparuerint, vel essoniati fuerint, quæritur qualiter erit procedendum versus absentem? Respondeo, omnes qui præsentes sunt vel essoniati habebunt alium diem, & ille qui absens est summoneatur quòd sit ad eundem diem ad sequendum cum talibus participibus suis, si voluerint, per tale breve.

6. Si particeps nominatus in brevi sequi noluerit vel non venerit, summoneatur ad sequendum, si voluerit.

Rex vicecomiti salutem. Summoneas per bonos summonitores A. quòd sit coram justic. &c. tali die ad sequendum cum B. C. participibus suis in placito quod est inter prædictos A. B. C. petentes & D. de N. tenentem de tanta terra cum pertinentiis in tali villa si voluerit. Et unde idem D. dicit, quòd non vult eisdem B. C. respondere sine prædicto A., & habeas &c. Teste &c. Et si prædictus A. ad prædictum diem non venerit, nihilominus procedant B. & C. de parte sua, si voluerint. Et quod de uno dicitur fieri poterit de pluribus, si sequi voluerint. Sed quid dicitur de uno participe & cohærede, qui petit versus participes & cohæredes suos partem suam cûm nihil habeat, & alii totum teneant, et secundum quod res partibilis fuerit ratione tenementi vel ratione rei tantum, vel ratione personarum, habere poterit tale breve de proparte versus participes suos et petere partem suam, quia actio dicitur mixta, et ita consequetur partem suam,

f. 370 b. Britton, iii. ch. i. §

part, or the fourth part, whether he has contested the suit in his own person or through an attorney, because the principal party in the suit loses through the default of his attorney, whether all have constituted an attorney or only one, and one out of several may well lose his part by default without his coparceners, although he is not bound from the commencement to answer without them. And if all the tenants have made one attorney, they may all lose by the default of that one attorney. Likewise let it be that one out of several coparceners has made default, and all the others have appeared in their own person, or have been essoined, it is asked how shall proceedings be had against the absentee? I answer, all who are present or who have been essoined shall have another day, and let him who is absent be summoned, that he be present on the same day to sue with his coparceners, if he wishes, by a writ of this kind.

6. If a coparcener named in a writ is unwilling to sue or has not come let him be summoned to sue, if he wishes so to do.

The king to the viscount greeting. Summon by good summoners A. that he be present before our justiciaries, &c., on such a day to sue with B. and C. his coparceners, in a plea which is between the aforesaid A., B., C., as claimants against D. de N. as tenant, concerning so much land with its appurtenances in such a vill, if he wishes. And wherein the said D. says that he does not wish to answer without the aforesaid A., and have, &c. Witness, &c. And if the aforesaid A. has not come on the aforesaid day, nevertheless let B. and C. proceed on their own part, if they wish. And what is said of one may be done with several, if they wish to sue. But what is said of one coparcener and coheir, who claims against his coparceners and coheirs his own part, when he has nothing and they hold the whole, and according as the thing is partible in regard of the tenement, or in regard of the thing only, or in regard of the persons, he may have such a writ for his proportionate share against his coparceners, and may claim his part, because the action is called mixed, and so he will obtain his part, f. 370 b.

quia assisa mortis antecessoris, nec alia actio locum habebit, nisi actio de proparte, quæ inter cohæredes jus terminat et distinguit. Et quia ad quemlibet ipsorum participum statim & in momento post mortem antecessoris descendit jus merum, quod quidem non erit inter alios cohæredes, cùm non sint partem capientes, quàmvis cohæredes, cûm totum jus merum tantum uni ex pluribus descendat, cûm hæreditas talis divisionem vel partitionem inter cohæredes non patiatur, et ideo semper unus præfertur omnibus aliis, cum sit hæres propinquior multis rationibus ut supra. Et cùm in tali actione mixta plures sunt qui teneant, sive unus petat sive plures, nullus eorum qui tenentes sunt respondebit sine aliis propter contributionem. Si autem plures sunt qui petant versus participes, quilibet petere debet per se, & non in communi cum participe suo petente, quia nullus eorum petit nisi rationabilem partem suam.

7. Si vir et uxor simul petant, et alter eorum defaltam fecerit.

Si autem vir petierit cum uxore rem uxoriam, ipsi participes dici non poterunt ratione supradicta, & defalta unius utrique erit damnosa, sive teneant sive petant. Et si tenentes fuerint, & per defaltam utriusque vel alterius terra capta fuerit in manum domini regis, et ita quòd fieri debat judicium de defalta, si uxor dicat virum suum mortuum esse, licet probationem vel sectam ad manum suam non habuerit, judicium remanebit in suspenso donec de veritate constiterit, et dabitur utrique eorum dies, et tunc probet uxor mortem et petens vitam: ut de itinere abbatis de Radinge & Martini de Pateshull tam in comitatu Surrey quàm Leycester, de Hugone filio Wilhelmi. Sed quare recurritur ad duas probationes cùm una sufficeret? Quia

because neither an assise of mortdancester will have place, nor any other action except an action for a proportionate share, which determines and distinguishes the right between coheirs. And because the mere right descends at once and in a moment after the death of the ancestor to each of the parceners, which will not be the case amongst other coheirs, when they are not taking a part, although coheirs, when the entire mere right descends to one only out of several, when such an inheritance does not admit of division or partition amongst coheirs, and therefore one is always preferred to all the others, since he is the next heir in many ways as above. And since in such an action there are several persons who hold, whether one only or several claim, none of those who are tenants shall answer without the others on account of their contribution. But if there be several who claim against parceners, each ought to claim by himself, and not in common with his parcener claimant, for none of them claim anything but his reasonable part.

7. If husband and wife claim together and one of them makes default.

But if a husband claims with his wife a thing belonging to his wife, they cannot be called coparceners for the reason abovesaid, and the default of one will be hurtful to both, whether they are tenants or claimants. And if they have been tenants, and through the default of both or of one of them the land has been taken into the hand of the king, and so that judgment ought to be made concerning the default, if the wife should say that her husband is dead, although she has not a proof nor a sect at hand, the judgment shall remain in suspense until it has been ascertained concerning the truth, and a day shall be given to both of them, and the wife shall prove the death and the claimant the life [of the husband]; as in the iter of the abbott of Reading and Martin de Pateshull, in the county as well of Surrey, as of Leicester, concerning Hugh the son of William. But why is recourse made to two proofs when one would

cûm uxor dicat uxorem esse mortuam,[1] ex tali protestatione non oritur nisi levis præsumptio, & si statim contra ipsam non excipiatur quòd vivat, tenetur in hoc casu probare dictum suum. Et si in probatione defecerit petens recuperabit, & uxor postea tale habeat recuperare quale habere debebit. Si autem petens contra dictum uxoris excipiendo dicat, quòd vivat, propter levem præsumptionem quæ oritur ex dicto uxoris, probet petens contrarium, scilicet exceptionem suam, scilicet vitam. Et in qua si defecerit cadit breve, & tenebit actio in persona uxoris. Et unde videtur quòd, cûm una probatio sufficiat, non est recurrendum ad duas.

8. Si quis defaltam fecerit antequam comparuerit, si loquela translata ad magnum curiam.

Videndum est inter cætera quando locum habere debeat breve quod dicitur magnum cape, & breve quod dicitur parvum cape eodem modo. Et regulariter verum est, quòd in omni casu ubi quis summonitionem sibi factam dedicere poterit, & defendere per legem, scilicet antequàm quis in curia comparuerit, scilicet in principio litis, si loquela fuerit in curia domini regis, vel alibi in comitatu vel in curia baronum, vel aliorum qui curiam habent. Item si loquela à comitatu transferatur ad curiam domini regis, licet quis in cõm se prius posuerit in magnam assisam, ita quòd quatuor milites sum̄oniti sunt ad eligendum xii. & tenentes in curia dñi regis defaltam fecerint post sum̄onitionem eis factam per pone, tunc capiatur in manum domini regis per magnum cape: ut de ultimo itinere M. de P. in comitatu Kanc. anno regis H. xii., de Ingeriano de Shoford, qui placitavit in curia per breve de recto. Et ideo quia diu placitasset in comitatu, quæ est una curia, nunquam tamen cõparuit in curia domini regis,

f. 371.

[1] "virum esse mortuum," MS. Rawl. C. 160 et 159.

suffice. Because when the wife says that the husband is dead, from such a protestation nothing but a slight presumption arises, and if forthwith an exception is raised against her that he is alive, she is bound in this case to prove her assertion. And if she should fail in the proof the claimant shall recover, and let the wife have afterwards such a recovery as she shall deserve to have. But if the claimant against the assertion of the wife shall say by way of exception, that he is alive, let the claimant prove the contrary, to wit, his exception, to wit, his life. And in which if he should fail, the writ falls, and the action in the person of the wife will hold good. And hence it appears that when one proof shall suffice, recourse is not to be had to two proofs.

8. If a person has made default before he has appeared, if the cause has been transferred to the great court.

It is to be seen amongst other things when the writ has place which is called the great *cape*, and the writ which is called the little *cape* in the same manner. And it is regularly true, that in every case, where a person can deny a summons made to himself, and contest it by his law, to wit, before he has appeared in court, to wit, at the commencement of the suit, if the cause should be in the court of the king, or elsewhere in the county court, or in the court of barons, or of others who have a court. Likewise if the cause be transferred from the county court to the court of the lord the king, although a person in the county court has put himself previously upon a great assise, so that four knights have been summoned to choose twelve, and the tenants in the court of the king have made default after a summons has been made to them by a *pone*, then let it be taken into the hand of the lord the king by a great *cape*, as in the last iter of Martin de Pateshull in the county of Kent, in the twelfth year of king Henry, concerning Ingerianus de Shoford, who sued in court by a writ of right. And therefore because he had sued a long time in the county court, which is one court, he had nevertheless never appeared in the court of the lord the king, which is f. 371.

quæ est alia curia, & ideo defendere poterit sum̄onitionem & sursisam, & diem datum contra recordum comitatus per legem. Sed quid si à curia baronis vel alterius propter defaltam, quia forte rectum tenere nolunt vel non possunt, sed ꝑbata defalta vel concessa dederit serviens dñi regis partibus diem ad comitatum, si tenens defaltam fecerit, capietur terra eodem modo in manum domini regis quasi per magnum cape, quia testata sum̄onitione per servientem, poterit tenens illam defendere per legem. Idem (ut videtur) servari poterit, ubi omnes loquelæ in banco ꝑpter iter justiciariorum vel alia de causa positæ fuerint sine die, & iterum resum̄oneantur, si tenens post resummonitionem defaltam fecerit, videtur, q̄ captio fieri debeat per magnum cape, quia talem summonitionem defendere poterit tenens per legem, ex quo in curia diem non habuerit postquàm loquela posita fuerit sine die, & ita observetur in omni casu ad quamlibet novam resummonitionem. Sed videtur quasi contrarium, ut si cui bastardia sic objecta fuerit, quòd transmittatur inquisitio de bastardia vel legitimitate ad curiam Christianitatis, & facta inquisitione remittatur inquisitio statim ad curiam regis, partes & loquela quæ posita fuit sine die ꝑpter objectionem bastardiæ, resummoneantur q̄ sint ad audiendum judicium, quo casu si tenens non venerit, capiatur in manum dñi regis ꝑ parvum cape, scilicet & q̄ ꝑtes sint audituræ judicium suū, & poterit esse ratio diversitatis q̄ ex quo quis se ꝑbaverit legitimū vel adversariū suū ad bastardū, nihil

another court, and therefore he might contest the summons and the neglect, and the day given against the record of the court by his law. But what if the cause be transferred from the court of the baron or another on account of the default, because by chance they are unwilling or they cannot entertain a plea of right, but upon the proof or the admission of the default the serjeant of the lord the king has given to the parties a day at the county court, if the tenant has made default, let the land be taken into the hand of the lord the king in the same manner as it were by a great *cape*, because upon the summons having been testified by the serjeant, the tenant may contest it by his law. The same (as it seems) may be observed, where all causes in *banco* on account of the iter of the justiciaries or some other cause have been put off without a day, and the parties are again re-summoned, if the tenant after the re-summons has made default, is seems that a caption ought to be made by a great *cape*, because the tenant may contest such a summons by his law, since he has not had a day assigned to him in the court, after the cause has been put off without a day, and let it be so observed in every case at every new re-summons. But it seems as it were the contrary, as if bastardy has been so objected to any one, that the inquest concerning bastardy or legitimacy should be transmitted to a court of Christianity, and upon the inquest having been held the inquest should be remitted forthwith to the court of the king, let the parties and the cause which was put off without a day, on account of the objection of bastardy, be re-summoned that they attend to hear judgment, in which case if the tenant has not come, let it be taken into the hand of the lord the king by a little *cape*, and that the parties should be present to hear their judgment, and the reason of the diversity may be this, that from the time when a person has proved himself to be legitimate or his adversary to

superest faciendū nisi tantū judiciū, q̄ non est in aliis casibus.

9. Parvum cape, &c. quis defaltam fecerit, portquam in curia comparuerit.

Parvū cape tunc locum habet, cùm quis in judicio semel cōparuerit & diem habuerit corā justiciariis quocunq̄ tēpore vel quacūq̄ ratione, ita q̄ diē & sum̄onitionem sequentem dedicere non possit nec defendere per legem, vel si fecerit tenens aliquid per q̄ præsumi possit quòd susceperit summonitionem, ut si, cûm sum̄onitus fuerit, attornatum fecerit in loquela per quam ad curiam summonitus fuerit, vel quid tale, exinde vero summonitionem dedicere non possit, secundum quod inferiùs dicetur de defaltis post apparitionem. Et generaliter verum est, quòd locum habet captio in manum domini regis per parvum cape, ubi quis defaltam fecerit in placito postq̄m in curia cōparuerit, sive unus implacitatus fuerit sive plures, cum hac tamen distinctione, q̄ si plures implacitati fuerint cohæredes, vel alii participes qui tenuerint in cōmuni, si omnes simul defaltam fecerint postq̄m simul & semel in judicio cōparuerint, vel vicissim omnes, omnes amittūt, & fiat parvū cape de omnibus. Si autē unus ipsorū tantū, duo vel plures essoniati fuerint primo die
f. 371 b. sum̄onitionis, & quidam eorum defaltam fecerint, & quidam eorum comparuerint, capiatur terra in manum dñi regis de terra quam tenent in com̄uni pro defalta absentium, pro rata cujuslibet qui absens est per magnum cape, & dabitur præsentibus dies, & ad quem diem si nō venerint cùm diem habuerint in juditio q̄m dedicere nō poterunt, capiatur de terra com̄uni in manum dñi regis per parvum cape p̄ rata, scilicet pro ea p̄te quæ singulos eorum qui absentes sunt contingit, & non tota, quia hæreditas & res com̄unis recipit parti-

be a bastard, nothing remains to be done except to pronounce judgment, which is not so in the other cases.

9. A little *cape*, if any one has made default after he has appeared in court.

A little *cape* has place then when a person has once appeared in court and has had a day assigned to him before the justiciaries at any time or for any reason, so that he cannot deny the day nor the following summons, nor contest it by his law, or if the tenant has done anything whereby it may be presumed that he has received the summons, as if, when he has been summoned, he has appointed an attorney in the cause for which he has been summoned to the court, or something of that kind, thenceforth he cannot deny the summons, according to what will be said below concerning defaults after an appearance. And generally it is true, that a caption into the hand of the lord the king by a little *cape* has place, where a person has made default in a suit after he has appeared in court, whether one has been sued or more, with this distinction however, that if several coheirs have been impleaded, or other coparceners who have held in common, if they should all make default after they have appeared together and at one time in court, or all in turns, they all lose, and let a little *cape* issue against them all. But if one only of them or two or more have been essoined on the first day of the summons, and some of them have made default, and some of them have appeared, let the land which they hold in common be taken into the hand of the lord the king for the default of the absent, according to the proportion of each who is absent, by a great *cape*, and to those present a day shall be given, and on which day, if they have not come when they have had a day in court, which they cannot deny, let there be taken into the hand of the lord the king by a little *cape* a proportionate part of the common land according to that share of it which belongs to each of the absentees, and not the whole, because the inheritance and common estate admits of partition and division between f. 371 b.

tionem & divisionē inter participes & cohæredes. Sed de viro & uxore non sic, cùm res uxoria partitionem vel divisionem non recipiat, cùm vir & uxor sint quasi unus sanguis & una caro & unum corpus, nihil enim habet uxor q̄ non sit viri. Et unde cùm implacitati fuerint primo die sum̄onitionis, antequam cōparuerint uterque fecerit defaltam, tota terra capiatur in manum dñi regis per magnum cape, & idem erit si unus eorum defaltam fecerit, licet alius comparuerit vel se essoniaverit. Si autem uterq̄ defaltam fecerint postquam cōparuerint, capietur terra in manum dñi regis per parvum cape, & idem erit si unus eorum defaltam fecerit, quia defalta unius utriq̄ erit damnosa. Item esto q̄ uxor antequam cōparuerit primo die defaltam fecerit, & vir comparuerit, capietur terra in manum dñi regis per magnum cape, & ipsa sum̄oneatur quòd sit ad alium diem, & vir habebit eundem diem, ad quem diem si vir defaltam fecerit & uxor venerit, tunc primò vidēdum an uxor sanare possit defaltam p̄ legē vel alio modo. Si autem defaltam sanare non possit, tunc amittet uterque p̄ defaltā mulieris statim, nec erit vir sum̄onendus q̄ sit auditurus juditiū; si autē defaltā sanaverit, non obstante absentia viri restituetur ei terra, q̄ capta fuit in manum dñi regis per magnum cape p̄ defaltam suam. Et si vir suus infra quartum diem non comparuerit, offerēte se liti petente quarto die versus eū, iterū capietur t̄ra in manū dñi regis per defaltā viri p̄ parvū cape, & ipse sum̄oneatur q̄ sit auditurus juditiū suū, & uxor habeat eundē diē. Forma brevis talis est.

the coparceners and the coheirs. But with regard to a husband and wife it is not so, since the wife's estate does not admit of partition or division, since man and wife are one blood and one flesh and one body, for the wife has nothing which is not her husband's. And hence when they have been impleaded on the first day of the summons, and before they have appeared both have made default, let their whole land be taken into the hand of the lord the king by a great *cape*, and the same thing will happen if one of them has made default, although the other has appeared or been essoined. But if both have made default, after they have appeared, the land shall be taken into the hand of the lord the king by a little *cape*, and the same thing shall be done, if one of them has made default, because the default of one will be damaging to both. But let it be that the wife before she has appeared has on the first day made default, and the husband has appeared, the land shall be taken into the hand of the king by a great *cape*, and let her be summoned to appear on another day, and the husband shall have the same day, on which day, if the husband has made default, and the wife has come, then let it in the first place be seen whether the wife can cure her default by law or in any other manner. But if she cannot cure her default, then both shall lose by the default of the woman forthwith, nor will the husband have to be summoned to hear the judgment, but if she can cure her default, notwithstanding the absence of the husband the land shall be restored to her, which has been taken into the hand of the lord the king by a great *cape* through her default. And if her husband has not appeared within the fourth day, the tenant presenting himself to join issue with him on the fourth day, the land shall be taken again into the hand of the lord the king by a little *cape*, and let him be summoned that he be present to hear his own judgment, and let his wife have the same day.

10. Forma brevis, quod dicitur parvum cape.

Rex vic. salutē. Cape in manū nostrā tantā terrā, vel advocationē talis ecclesiæ, vel pasturā ad tot oves, cū ꝑtinentiis in tali villa ꝙm A. de N. in curia nr̃a corā justiciariis nr̃s clamat ut jus suū versus B. ꝑ defectu ipsius B., vel sic: clamat ut jus suū versus B. & C. uxor̃ ejus ꝑ defectu ipsius B. vel ꝑ defectu ipsius C., vel sic, si plures sint ꝑticipes veluti tres: capiatur tertia pars terræ quæ tenetur ī cōmuni, & dicatur, ĩtiā ꝑtem ꝙm talis clamat &c. ut supra. Itē si dos petatur, tunc sic: tertiā partē ĩræ cū ꝑtinentiis in N. ꝙm A. q̃ fuit uxor B. clamat in curia nr̃a &c. ut dotē suam versus C. ꝑ defectu ipsius C., & hujusmodi, secundū diversitatē placitorū, & tunc dicatur: Sum̄oneas ꝑ bonos sum̄onitores prædictu C. ꝙ sit &c. ad talē diē auditurus inde judiciū suū, & habeas ibi sum̄onitores & hoc br̃e. Teste &c. Et ad q̃m diē si omnino non venerit, expectabitur quartus dies, & quarto die adjudicetur petēti seysina, ita ꝙ efficiatur verus possessor, & tenens habeat tale recuperare quale habere debebit, & idē erit si tenens venerit & defaltam sanare non possit. Cùm autem non venerit, sic fiat irrotulatio,
f. 372. A. obtulit se quarto diẹ versus B. de tali placito &c., & B. nō venit & alias fecit defaltā in curia postꝙm cōparuerit in curia, vel postꝙm diem habuerit in banco, vel postꝙm petiit visū vel vocavit warrātū, & ita ꝙ ĩra capta fuit in manū dñi regis & ipse sum̄onitus ꝙ esset ad hunc diē auditurus juditiū suū, ideò cōsideratum est ꝙ A. recuperet seysinā suā & B. in misericordia. Si autē ille qui defaltā fecit p̃sens fuerit

10. The form of the writ, which is called a little *cape*.

The king to the viscount greeting. Take into our hand so much land, or the advowson of such a church, or a pasture for so many sheep with its appurtenances in such a vill, which A. de N. in our court before our justiciaries claims as his right against B., through failure of the said B.: or thus, which he claims as his right against B. and C. his wife through failure of the said B. or through the failure of the said C.; or thus, if there be several coparceners as for instance three, let a third part of the land which is held in common be taken, and let it be said, the third part which so-and-so claims &c. as above. Likewise if dower be claimed, then thus: the third part of the land with its appurtenances in N. which A. who was the wife of B. claims in our court, &c. as her dower against C., through failure of the said C., and such like, according to the diversity of pleas, and then let it be said: Summon by good summoners the aforesaid C., that he be &c. at such a day in order to hear thereon his judgment, and have there the summoners and this writ. Witness &c. And on which day if he has not come at all, the fourth day shall be waited for, and on the fourth day let seysine be adjudged to the claimant, so that he be constituted the true possessor, and let the tenant have such a recovery as he will deserve to have, and the same thing will happen if the tenant has come and cannot cure his default. But when he has not come, let the enrolment be made in this manner: A. presented himself on the fourth day against B. in such a plea, &c., f. 372. and B. has not come and otherwise has made default in the court after he has appeared in the court, and after he has had a day in the bench, and after he has claimed a view or has called a warrantor, and so that the land has been taken into the hand of the lord the king, and he himself having been summoned that he should attend on this day to hear his judgment, therefore it has been resolved that A. should recover his seysine, and B. should be amerced. But if he who has made default has been

primo die & excusationē nō habuerit, nec warrātū, tūc variatur irrotulatio sic, A. petiit versus B. tantā terrā cum pertinētiis in tali villa, ita q̄ B. habuerit diē postq̄m in curia cōparuerit, ad q̄m diē nō venit, nec se essoniavit, & ita q̄ terra capta fuit in manū dñi regis & ipse sum̄onitus q̄ esset ad hunc diē auditurus inde juditiū. Et ipse nūc venit, & nō potest sanare defaltam. Ideo cōsideratum est q̄ A. recuperet seysinā suā, & B. in misericordia, & fiat breve de seysina habēda in com̄uni forma breviū de defaltis. Sed quid si ille tenens[1] qui recuperare deberet p̄ talē defaltā in curia nō cōparuerit ad diē suū, sed defaltam fecerit, primo, secundo, tertio, quarto die, & tenens p̄sens fuerit, petens amittet breve suū p̄ defaltā suā, & tenens retinebit terrā suā q̄m amissurus esset p̄ defaltā suā, ut de term̄ S. M. anno regis H. iii. incipiente iv. circa mediū rotuli. Si autē neuter illorū venerit, tunc (facta cōpensatione defaltæ ad defaltā) petens ad aliū diē quādo voluerit p̄ defaltā tenentis obtinebit.

11. Si quis defaltam fecerit in actione mixta.

Actiones vero mixtæ q̄ sunt tam in rem q̄m in p̄sonā, & ubi uterq̄ actor uterq̄ reus, sed ille actor qui primò p̄vocaverit ad judiciū sicu inter cohæredes & p̄ticipes, ubi p̄ticeps petit rationabilē p̄tem suā versus cohæredē & p̄ticipem, sicut ubi hæreditas partibilis sit, vel ratione rei vel ratione p̄sonarū. Item ubi res com̄unis p̄tibus sit inter alios p̄ticipes qui non sunt cohæredes, & unus agat versus p̄ticipē q̄ res cōmunis dividatur.

[1] "si ille petens," MS. Rawl. C. 159.

present on the first day, and has made no excuse, nor has vouched a warrantor, then the enrolment is varied in this manner: A. has claimed against B. so much land with its appurtenances in such a vill, so that B. has had a day after he has appeared in the court, on which day he has not come nor has essoined himself, and so that the land has been taken into the hand of the lord the king, and he himself has been summoned that he attend on this day to hear judgment thereon. And he himself now comes and cannot cure his default. It has therefore been resolved that A. should recover his seysine, and B. should be amerced, and let a writ issue for having seysine in the common form of writs for defaults. But what if the claimant who ought to recover through such default has not appeared in the court on his day, but has made default on the first, the second, the third, and the fourth day, and the tenant should be present, the claimant shall lose his writ through his default, and the tenant shall retain his land which he was about to lose through his own default, as in St. Michael's term in the third and fourth years of king Henry, about the middle of the roll. But if neither of them has come (then compensation for the one default having been made by the other default), the claimant shall have an adjournment to another day when he pleases through the default of the tenant.

11. If a person has made default in a mixed action.

But mixed actions which are directed as well against a thing as against a person, and where either party is a plaintiff, and either party a defendant, but he is the plaintiff who has first applied to a court, as between coheirs and coparceners, where a coparcener claims his reasonable share against a coheir and coparcener, as where the inheritance is partible, either by reason of the thing or by reason of the persons. Likewise where the thing common to the parties is between other parceners who are not coheirs, and one brings an action against a parcener that the common estate should be divided. Like-

Itē si inter vicinos cōtentio sit de finibus agrorū, & unus vicinorū petat q̄ fiant rationabiles divisæ inter ipsū & vicinū suū, omnes istæ actiones mixtæ coñumerari debēt inter actiones q̃ sunt in rem, & nō q̃ sunt in p̄sonā: Et ideo si quis in iis tribus actionibus, vel consimilibus, defaltā fecerit, p̄cedatur cōtra ipsum sicut p̄cessum est supra cōtra eos qui defaltā fecerint in actione reali. Et ideo in omni actione ubi duæ cōcurrāt districtiones, videlicet in rem & in p̄sonam, illa districtio tenēda est q̃ magis timetur et magis ligat.

12. Si duæ actiones, quarum una personalis et alia realis, currant versus unum in uno brevi.

Cum autē duæ actiones sub uno brevi cōprehēdantur, quarū una in p̄sonā & alia in rem, ut si quis sum̄oneatur q̄ sit ad ostendēdū quo warranto tenuerit talem terrā, & postea adjungat, quam dñs rex clamat esse eschaetam suam vel de antiquo dominico suo, cùm hic duę concurrant districtiones, illa tenenda est q̃ magis ligat, secūdum q̄ supradictum est, scilicet q̄ terra capiatur in manum dñi regis, (licet quidā faciant contrariū). Si autē in diversis brevibus de qualibet istarū fieret mentio p̄ se, si in brevi quo warranto fieret defalta, p̄cederetur ad attachiamētum, & non ad captionem terræ, & de alio brevi è conversò. Si quis igitur impetraverit breve quo warranto, vel quo jure quis terram tenuerit sine aliqua adjectione, nihil poterit petens consequi per tale breve vel per talem actionē, quamvis warrātum non habuerit tenens nec jus aliquod, f. 372 b. nihil consequi poterit petens per tale breve, quia probato quòd tenens nihil juris habeat, non tamen probatur p̄ hoc quòd petens jus habeat, & antequam

wise if there should be between neighbours a contention concerning the boundaries of fields, and one of the neighbours claims that there should be reasonable divisions between himself and his neighbour, all these mixed actions are accustomed to be comprised amongst actions which are against the thing, and not which are against the person. And accordingly if any person in these three actions or similar ones has made default, let proceedings be taken against him as they have been above taken against those who have made default in a real action. And therefore in every action where two distraints concur, to wit, against the thing and against the person, that distraint is to be maintained which is most feared and is most binding.

12. If two actions, of which one is personal and the other real, run against one person in one writ.

But when two actions are comprised under one writ of which one is against a person and the other against a thing, as if a person be summoned that he be present to show "by what warrant" he holds such a land, and it afterwards adds, "which the lord the king claims to be "his escheat, or of his ancient demesne," since here two distraints concur, that one is to be maintained, which is the most binding, according to what has been said above, to wit, that the land should be taken into the hand of the lord the king (although some do the contrary). But if in different writs there should be mention by itself of either of them, if there be a default in the writ '*quo* '*warranto*,' proceedings should be had for an attachment, and not for the caption of the land, and concerning the other writ conversely. If [therefore any one has sued out a writ of *quo warranto* or of *quo jure* against a tenant of land without any addition, the claimant cannot obtain anything through such a writ or such an action, although the tenant may have no warrantor nor any right, the tenant cannot obtain anything through f. 372 b. such a writ, because if it be proved that the tenant has no right, it is not therefore proved that the claimant has any right, and before the claimant can acquire anything

petens aliquid sibi perquirat, alio brevi et alia actione opus erit. Sed tamē quamvis incivile sit cogi possessorem titulum suæ possessionis dicere per breve quo jure, vel quo warranto; tamen valet ad hoc ut petens scire possit utrum tenens teneat pro hærede vel p possessore, & p hoc qua actione debet experiri: pro hærede autem possidet, qui putat se hæredem esse, pro possessore vero, qui nullo jure rem hæreditariam vel totam hæreditatem, sciens ad se non pertīnere, possidet.

## Cap. V.

1. Partibus in judicio comparentibus qualiter petens proponere debet intentionem suam. De modo narrandi.

Post essonia & dilationes, vel ad primum diem summonitionis per breve de recto in juditio comparentibus tam petente quàm tenente, petens actionem qua agere velit & intentionem suam proponere debet coram justiciariis, ut per hoc speciem futuræ litis demonstret. Et audito brevi de recto, secundum quod fuerit clausum vel apertum, dicat sic petens vel ejus advocatus, in præsentia justiciariorum pro tribunali residentium: Hoc ostendit vobis A. quòd B. injustè ei deforciat tantum terræ cum pertinentiis in tali villa, & ideo injustè, quia quidam antecessor suus nomine C. fuit inde vestitus & seysitus in dominico suo ut de feodo & in jure tempore H. regis avi domini regis, vel tempore regis Richardi avunculi domini regis, vel tempore Johannis regis patris domini regis, tempore H. regis[1] qui nunc est capiendo inde expletia ad valentiam quinque solidorū vel dimidii marcæ, sicut in bladis, pratis, redditibus, & aliis exitibus terre, & de prædicto C. descendit jus terræ illius, vel descendere

[1] "vel tempore H. regis," MS. Rawl. C. 160.

for himself, he will require another writ and another action. But although it be against the civil law that a possessor should be compelled to disclose the title of his possession through a writ of *quo jure* or of *quo warranto*, nevertheless it is effective for this purpose that the claimant may know whether a tenant holds as an heir or as a possessor, and thereby by what action he ought to proceed; but he possesses as an heir, who believes himself to be an heir, but he possesses as a possessor, who possesses by no right an hereditary estate or an entire inheritance, knowing that it does not belong to himself.

## Chapter V.

1. Upon the parties appearing in court, in what way the claimant ought to propound his declaration. Of the manner of declaring.

Upon the parties as well the claimant as the tenant appearing in court after essoins and adjournments, or on the first day of the summons under a writ of right, the claimant ought to propound the action by which he means to proceed and his declaration before the justiciaries, that he may thereby make known the species of his future suit. And upon the writ of right having been read aloud, according as it has been a close writ or an open writ, let the claimant or his advocate in the presence of the justiciaries sitting on the tribunal say thus: A. shows this to you that B. unjustly deforces him of so much land with its appurtenances in such a vill, and on these grounds unjustly, because a certain ancestor of his by name C. was clothed and seysed thereof in his own domain as of fee and in right in the time of king Henry the grandfather of the lord the king, or in the time of king Richard the uncle of the lord the king, or in the time of king John the father of the lord the king, or in the time of king Henry who now is, by taking thereof profits to the value of five shillings or of half a mark, for instance in grain, meadows, rents, and other produce of the soil, and from the aforesaid C. the right in that land

debuit (secundum quosdam) cuidam D. ut filio & hæredi, & de prædicto D. cuidam E. ut filio & hæredi, & de prædicto E. isti A. qui nunc petit ut filio & hæredi, & quòd tale sit jus suū, offert disrationare per corpus talis liberi hominis sui, vel alio modo sicut curia consideraverit. Non enim sufficit simpliciter proponere intentionem suam sic dicendo, Peto tantam terram ut jus meum, nisi sic illam fundaverit, quòd doceat ad ipsum jus pertinere, & per quam viam & per quos gradus jus ad ipsum debeat descendere.

2. De articulis, quibus uti debet in narratione.

Item cùm agat per breve de recto ad utrunque jus consequendū, scilicet tam jus possessionis q̄m p̄prietatis, de seysina talis antecessoris, non sufficit si dicat q̄ talis antecessor suus fuit seysitus in dominico suo ut de libero tenemento tantum, vel in dominico suo ut de feodo tantum, nisi doceat q̄ in dominico suo ut de feodo, q̄ sub se continet liberum tenementū & totū jus possessoriū, nisi dicat & adjiciat, & jure, quod sub se cōtinet jus p̄prietatis. Itē nō sufficit ista duo jura simul cōprehendere, scilicet jus possessorium & p̄prietatis, sicut *dreit dreit*, nisi antecessor talis tenuerit terram illam in dominico suo, quia nō sufficit, si tantum
f. 373. in servitio, ad hoc quòd ille qui petit de seysina tali aliquid per tale breve acquirere sibi possit in dominico, quia talem seysinam petit hæres, qualem habuit antecessor, nec variare poterit, licet contingat aliquando quòd quis per breve de recto partim possit petere in dominico & partim in servitio, quod non erit de seysina & facto antecessoris, sed de facto & feoffamento injuste deforciantis, vel alicujus sui antecessoris. Et quo casu, cùm petens petat in servitio quod habere possit in dominico, sibi possit imputari, secundum

has descended or ought to descend (according to some) to a certain D. as the son and heir, and from the aforesaid D. to a certain E. as the son and heir, and from the aforesaid E. to the said A. the present claimant as the son and heir, and that such is his right he offers to prove by the body of so-and-so his free man, or in any other way as the court may resolve. For it is not sufficient to propound simply his declaration by saying, I claim so much land as my right, unless he has so grounded it, as to show that it belongs to his right, and through what way and by what degrees the right ought to descend to him.

2. Of the articles, which he ought to use in his declaration.

Likewise when he seeks by a writ of right to obtain both rights, to wit, the right of possession as well as the right of property, from the seysine of such an ancestor, it is not sufficient if he should say that so-and-so his ancestor was seysed in domain as of a free tenement only, or in his domain as of fee only, unless he states that he was seysed in his domain as of fee, which implies the free tenement and all the possessory right, unless he says and adds "and of right," which implies the right of property. Likewise it is not sufficient to comprise those two rights together, to wit, the possessory right and the right of property, as *dreit dreit*, unless the said ancestor held that land in his domain, because it is not sufficient, if he has held it only under service, for the f. 373. purpose that he who claims it upon such seysine should acquire for himself any thing in domain by such a writ, because the heir seeks such a seysine, as his ancestor had, nor can he vary it, although it may happen sometimes that a person by a writ of right can claim partly in domain and partly under service that which will not be of the seysine and the act of his ancestor, but of the act and the feoffment of an unjust deforceor, or of some ancestor of his own. And in which case when the claimant claims under service what he may have in domain, it may be imputed to himself according to what

quod inferius dicetur plenius. Item non sufficit, si dicat quòd antecessor suus fuit seysitus ut de feodo & jure & in dominico suo, nisi adjiciat quòd expletia ceperit, quia licet quis liberum tenementum habere possit & feodum sine expletiis in causa possessionis, secundum quod videri poterit superiùs in intentione querentis & petentis in assisa novæ disseysinæ, & mortis antecessoris; non tamen debet esse ita momentanea seysina proprietatis, quin capiantur expletia. Et ideo si non fiat mentio de expletiis, cadit actio petentis. Item adjicitur in narratione, tempore talis regis, certum enim oportet exprimere tempus, & certum regem de cujus tempore loquatur. Et de tenera seysina & momentanea sine usu & expletiis nunquàm competat actio per breve de recto super proprietate: sed tantum assisa novæ disseysinæ de disseysina propria, vel assisa mortis antecessoris de seysina antecessoris, & qui assisas omiserit in hoc casu & processerit ad breve de recto super proprietate, omnino amittet sine recuperatione.

3. Qualiter breve de recto limitetur.

Quia breve de recto sicut alia brevia infra certum tempus limitatur, non enim excedit tempus regis Henrici avi domini regis. Et est ratio, quia ultra tempus illud non poterit quis aliquid probare, licet jus habeat in re: cùm nullus aliquid p̄bare possit ultra tempus illud, ex quo loqui non poterit de visu suo proprio, vel de visu patris sui, qui ei injunxit quòd testis esset si inde audiret loqui. Et unde si quis loqueretur de tempore Henrici regis senīs, amittere possit propter defectum probationis. Item ideo fit mentio de tempore certi regis, quia si nunquàm tempore talis regis fuit antecessor in seysina, quamvis tempore alterius regis, amittere posset petens per errorem ac si antecessor talis nunquàm inde esset in seysina. Et unde cū

cf. Stat. Merton, 20 H. iii.

shall be said more fully below. Likewise it is not sufficient, if he should say that his ancestor was seysed as of fee and of right and in his own domain, unless he should add that he has taken profits, because although a person may have a free tenement and a fee without profits in a cause of possession, according to what may be seen above in the declaration of a plaintiff and claimant in an assise of novel disseysine and of mortdancester, nevertheless the seysine of the property ought not to be so momentary, that he has not had any profits. And therefore if there is no mention of profits, the action of the claimant falls. Likewise there is added in the declaration "in the time of such a king," for it ought to express a certain time, and a certain king concerning whose time it should speak. And an action by a writ of right concerning property would never be allowable upon a tender and momentary seysine without the use and profits, but only an assise of novel disseysine concerning one's own disseysine, or an assise of mortdancester concerning the seysine of an ancestor, and he who has omitted the assises in this case and has proceeded to a writ of right concerning the property, will lose it altogether without recovery.

3. In what way a writ of right is limited.

Because a writ of right, like other writs, is limited within a certain time, for it does not exceed the time of king Henry the grandfather of the lord the king. The reason is because no one can prove anything beyond that time, since he cannot speak of his own sight, nor of the sight of his father, who enjoined him to be a witness, if he should hear speak of it. And hence if any one should speak of the time of king Henry the elder, he may lose through failure of proof. Likewise for this reason mention is made of a certain king, because if his ancestor never was in seysine in the time of such a king, although in the time of another king, the claimant may lose by the error, as if his said ancestor had never been in seysine thereof. And hence when any one after such

quis post talem errorem inde se posuerit in magnum assisam, dat aliquando tenens de suo pro habenda mentione de tempore. Vel ideo fit mentio de tempore quia talis antecessor tempore talis regis non fuit in rerum natura, vel quia prius mortuus, vel tunc non natus.

4. Quod tenens poterit mutare intentionem suam in parte.

Cùm autem per errorem aliquando fiat mentio de tempore indebito, si ipse petens erraverit, poterit intentionem suam mutare & errorem revocare, & loqui de tempore alterius regis usque ad litis contestationem, scilicet quousquè fuerit præcisè responsum intentioni petentis, & ita quòd tenens se posuerit in magnam assisam, vel defenderit per duellum. Ulterius autem nequaquàm, cùm facta fuerit mentio de tempore. Et de hac materia inter placita quæ sequuntur regem anno vicesimo quarto de dño rege & W. de S. Johanne in comitatu South. Item non multum refert, si de
f. 373 b. quantitate expletiarum fiat mutatio intentionis. Item fit mentio de tẽpore pacis ꝑ aliquo tempore guerrino, sicut de tempore regis I., quia de seysina antecessoris tali tempore acquisita loqui non convenit, quia post guerram recuperaverunt illi, qui per guerram fuerint, disseysiti, talem seysinam qualem habuerunt in initio guerræ, cùm per vim & injustè essent disseysiti. Per vim & injuste dico, quia multi ab hostibus capti sunt in bello, & terram dant pro redemptione sua, & talibus non subvenitur, nisi per actionem quòd metus causa, si forte metus intervenerit. Et etiam sunt plures, qui tali tempore gratis dant sine aliqua violentia vel metu, et talis donatio non revocatur. Item non sufficit ꝙ petens intentionem suam sic proponat et fundet,

an error has put himself upon a great assise, the tenant gives something of his own to have mention of the time, or for this reason mention is made of the time, because the said ancestor in the time of such a king was not *in rerum natura*, or because he was dead beforehand, or at that time was not born.

4. That the tenant may change his declaration in part.

But when through error there is sometimes made mention of an undue time, if the said claimant has made an error, he may change his declaration and revoke his error, and speak of the time of another king up to the time of the contestation of the suit, to wit, until a precise answer has been given to the declaration of the claimant, and so that the tenant has put himself on the great assise or will defend himself by battle. But beyond this by no means, when mention has been made of the time. And on this matter there is a case amongst the pleas which follow the king in the twenty-fourth year concerning the lord the king and William St. John, in the county of Southampton. Likewise it does not matter if an alteration of the declaration has been made concerning the quantity of profits. Likewise mention is made of "a time of peace" instead of "a time of war" as in the time of king John, because it is not suitable to speak of the seysine of an ancestor acquired in such a time, because those, who have been disseysed through a war, have recovered after the war such seysine as they had at the commencement of the war, since they were disseysed by force and unjustly. I say by force and unjustly, because many persons are taken captive by the enemy in war and give land for their ransom, and such persons are not aided unless by an action *quod metûs causa*, if by chance fear has intervened. And likewise there are more persons who give their land at such a time gratuitously without any violence or fear, and such a donation is not revoked. Likewise it is not sufficient that a claimant so propounds and grounds his declaration, unless he has

f. 373 b.

nisi sic fundatam probaverit, et dicatur in fine intentionis fundatæ: Et quòd tale sit jus suum, offert disrationare per corpus cujusdam talis liberi hominis sui, et talis nomine, qui hoc paratus est disrationare per corpus suum, sicut ille qui hoc vidit, vel de visu patris sui (ut supradictum est), cui pater suus cùm esset agens in extremis injunxit in fide, qua filius patri tenebatur, quòd si inde loqui audiret, quòd inde testis esset, et hoc per corpus suum disrationaret, sicut illud quod idem pater suus vidit et audivit. Si autem in narratione facienda aliquis articulorum prædictorum omittatur, et narratio à petente advocetur, ita quòd error revocari non possit, et petens clameum suum pro se et hæredibus suis amittet imperpetuum.

## Cap. VI.

1. Qualiter fit narratio descensus usque ad petentem per singulos gradus.

Fit etiam quandoque narratio descensus ab antecessore usque petentem per plures personas et plures gradus, et ad plures personas qui sunt quasi unus hæres, sicut ad plures filias et earum hæredes, et quo casu sic fiet[1] narratio: Et à tali antecessore descendit jus terræ illius tali ut filio et hæredi, et de tali duabus filiabus suis vel pluribus, scilicet B. primogenitæ, et C. postnatæ. Et hic fiat in narratione divisio descensus pro virili portione quæ singulas earum contingit, et ita quòd narratio descensus prosequatur lineam singularem, et dicatur sic: Et de prædicta D. descendit jus medietatis illius terræ cuidam tali, ut filio vel filiæ et hæredi. Et de prædicto tali descendit jus

[1] "fiat," MS. Rawl. C. 160.

proved it to be so grounded, and it be thus said at the end of the declaration so grounded, and that such is his right he offers to deraign by the body of a certain so-and-so his free man, and so-and-so by name, who is prepared to deraign this by his body, as one who has viewed it, or upon the view of his own father (as aforesaid), to whom his father when he was in his last moments enjoined upon the faith whereby a son is bound to his father, that if he should hear it spoken of, that he should be a witness thereof, and that he should deraign it by his body, as a thing which his said father had seen and heard. But if in making the declaration any of the aforesaid articles is omitted, and the declaration is argued by the claimant, so that the error cannot be recalled, the claimant shall lose his claim for himself, and for his heirs in perpetuity.

## Chapter VI.

1. In what way the declaration is made of the descent down to the claimant through single degrees.

A declaration is sometimes made of the descent from the ancestor to the claimant through several persons, and several degrees, and to several persons who are as it were one heir, as for instance to several daughters and their heirs, and in which case the declaration should be made thus: "and from such an ancestor the right to "that land descends to so-and-so as the son and heir, "and from so-and-so to his two daughters or more, to wit, "to B. the elder born and to C. the younger born." And here there should be made in the declaration a division of the descent of the particular portion which belongs to each of them, and so the declaration of the descent follows the singular line and may be stated thus: "and "from the aforesaid D. the right to the medicty of that "land descends to a certain so-and-so as the son or the "daughter and heir; and from the aforesaid so-and-so

illius medietatis duabus filiabus ipsius talis, scilicet D. et E., et ita quòd fiat subdiviso.[1] Sed cautè[2] perspicendum ne in reversione facienda ad superiores parentes in linea transversali, quòd computatio excedat tempus regis avi, et infra eodem. Et de prædicta A. descendit jus illius quartæ tali ut filio et hæredi. Et de prædicta E. tali ut filio et hæredi, et sic per divisiones in infinitum perveniri poterit de hærede in hæredem usque ad minimam partem unius unciæ,[3] si
f. 374. hæreditas per uncias dividatur. Item fiat reversio ad aliam medietatem et reincipiatur narratio descensus sic: Et de prædicta C. descendit jus alterius medietatis tali ut filio et hæredi, vel tali ut filiæ et hæredi, vel ut filiabus et hæredibus, et ita quòd fiat subdivisio (ut supra) de gradu in gradum, persona in psonam, usq̃ ad illos qui petant, vel aliter: Et unde talis antecessor fuit seysitus, &c. ut supra. Et quia talis obiit sine hærede de se, descendit jus terræ illius tribus sororibus suis, A. B. C. vel filiis sicut de Gavelkynde, vel alibi ubi terra partibilis est ratione terræ, vel ratione plurium personarum q̃ sunt quasi unus hæres, et sic fiat divisio ut supra. Item fit narratio descensus aliquando à linea recta descendente usq̃ ad lineam transversalem ad unum gradum, vel ad plures, secundum q̃ jus descensus recipit divisionem vel non recipit. Et sicut dividitur aliquando jus successionis ad plures personas quæ succedunt, ita conjungi poterunt plura jura successionis per mortem earundem personarum, ratione quarum facta fuit divisio in unum jus, et in unicam personam hæredem per jus accrescendi, quia cohæredes et participes mortui sunt sine hærede de se.

[1] "fiat subdivisio," MS. Rawl. C. 160.

[2] "Sed caute" down to "eodem" omitted, MS. id.

[3] Uncia, modus agri, Sc. duodecima pars jugeri, Ducange Gloss.

" the right to that mediety descends to his two daughters, " to wit, D. and E.," and so that a subdivision be made. But it is to be cautiously observed lest in tracing the reversion to the ascendants in the transverse line the computation should exceed the time of the grandfather of the king, and downwards in the same manner: " And from the aforesaid A. the right to that fourth " share descends to so-and-so as the son and heir, " and from the aforesaid E. to so-and-so as the son " and heir," and so by divisions without end one may arrive from heir to heir down to the smallest part of a single ounce, if the inheritance be divided by ounces. Likewise let a return be made to the f. 374
other mediety, and let there be recommenced the declaration of the descent thus: " and from the aforesaid " C. the right to the other mediety descends to so-and-so " as the son and heir, or to so-and-so as the daughter and " heiress, or to such as daughters and heiresses," and so that a subdivision be made (as above) from degree to degree, from person to person, down to those who claim, or otherwise. " And whereof such an ancestor was " seysed," &c. as above. And because so-and-so died without an heir of his own, the right in that land descended to his three sisters, A., B., and C., or to his sons as in gavelkind, or elsewhere where the land is partible by reason of the land or by reason of several persons who are as it were one heir, and so let a division be made as above. Likewise a declaration is made of the descent sometimes from a right line descending down to a transverse line for one degree or for more, according as the right of descent receives a division or not. And like as the right of succession is sometimes divided amongst several persons who succeed, so through the death of the said persons in regard of whom the division has been made many rights of succession may be conjoined into one right, and in a single personal heir through the right of accretion, because coheirs and parceners have died without an heir of themselves.

2. Si fieri debeat narratio a linea recta usque ad transversalem.

Cùm vero fieri debeat narratio descensus à linea recta usq̃ ad lineam transversalē, tunc dicatur, & à tali antecessore descendit jus terræ illius tali ut filio et hæredi et de tali tali ut filio et hæredi, et quia idem talis obiit sine hærede de se, revertebatur jus ĩræ illi[9] tali ut avunculo vel amitæ vel materteræ et hæredi, vel ꝑavunculo vel ꝑamitæ vel ꝑmaterteræ ut hæredi, vel pluribus amitis vel mateꝛteris vel proamitis vel promateꝛteris. Et de talibus facta divisione juris usque ad suos hæredes et hæredes hæredum per divisiones, &c. ut supra, vel sine. Et quo casu, si unus ex pluribus participibus petat per se solus sine aliis, et objiciatur ei quòd participes habeat qui veniunt ex eodem stipite, & petens dicat quòd nihil possunt tales clamare per descensum illum, summoneantur nihilominus ad ostendendū quid juris clamant in terra petita: ut de termino Sancti Hilarii anno regni regis Henrici decimoquinto in comitatu Buckingham de Walter de Bosco. Et illud generaliter observatur ubique, ubi præsumi poterit quòd quis jus habeat in re petita, qui non nominatur. Et quòd talis summoniri debeat, habetis de termino Sancti Hilarii anno regni regis Henrici nono in comitatu Berks. de Reginaldo Morin.

3. Si antenatus in vita patris communis moriatur.

Si antem in vita patris moriatur, dicunt quidam quôd nulla de eo fieri debet mentio ac si nunquàm esset in rerum natura (secundum quosdam), quòd non est verum, quia nulli hæredi descendit jus aliquod ab antecessore, nisi per mortem antecessoris. Sed sunt quidam qui dicunt (& verum est) quòd de filio mortuo in vita patris oportet facere mentionem secundum Wilhelmum de Eborum, & unde dicere oportet quòd

Britton, vi. ch. ii. § 4.

2. If a declaration ought to be made from a right line to a transverse line.

But when there ought to be made a declaration of a descent from the right line to a transverse line, then let it be said "and from such an ancestor the right in that "land has descended to so-and-so as the son and heir, "and from such person to so-and-so as the son and heir, "and because the said so-and-so died without any heir "of his body, the right in that land reverted to so-and-"so as the uncle or aunt by the father's side or aunt by "the mother's side and heir, or to several aunts by the "father's or the mother's side, or to several grand-aunts "by the father's or the mother's side. And from such "persons on a division having been made, to their right "heirs and the heirs of such heirs through divisions, &c. "as above, or without them." And in which case, if one out of several parceners claims by himself alone without the others, and it be objected to them that he has coparceners who come from the same stock, and the claimant says that they cannot claim anything through that descent, nevertheless let them be summoned to show what right they claim in the land so claimed, as in St. Hilary's term in the fifteenth year of the reign of king Henry in the county of Buckingham, concerning Walter de Bosco. And that is generally observed everywhere, when it can be presumed, that a person who is not named has a right in the thing claimed. And that such a person ought to be summoned you have a precedent in St. Hilary's term in the ninth year of the reign of king Henry in the county of Berks, concerning Reginald Morin.

3. If the elder-born dies in the life of the common father.

But if he dies in the lifetime of the father, some say that no mention ought to be made of him, as if he had never been *in rerum natura* (according to some), which is not true, for to no heir does any right descend from an ancestor, except through the death of an ancestor. But there are some who say (and it is true) that concerning a son who has died in the lifetime of the father mention ought to be made according to William of York, and

de tali antecessore descendit jus vel descendere debuit tali nepoti vel nepti vel fratri tali si hæredes de corpore defecerint. Et unde cùm filius moriatur in vita patris relicto filio hærede vel filia, cùm sint in potestate avi, statim descendit eis jus. Et unde si fiat narratio descensus, oportet quòd fiat mentio de gradu vacuo per mortem filii, ne fiat saltus gradu prætermisso, & dicatur sic: Et unde talis antecessor fuit
f. 374 b. seysitus &c., et de tali antecessore decendere debuit jus tali, ut filio & hæredi, & de tali ei qui nunc petit ut nepoti vel nepti & hæredi, quasi aliter esset, et ille qui in vita patris moreretur feloniam faceret, eo in descensu non computato, sic posset hæreditas et jus possessionis et successionis ĩmediate descẽdere nepotibꝰ vel neptibus ab avo, non obstãte felonia patris, ꝙ esset incõveniens. Sed cùm primogenitus moriatur in vita patris nullo hr̃de de corpore suo relicto, sed fratribus, nõ oportet de fratre antenato, qui in vita patris mortuus est, facere mẽtionẽ in narrationẽ descensus, licet jus ei descẽdere deberet, tum quia fratres superstites sunt adeo ꝑpinqui hæredes in gradu quoad seysinã, sicut ille fuit qui mortuus est, tum etiã quia primogenitus eorũ qui superstites sunt statim post mortẽ fratris p̃mortui incipit esse loco ipsius hæres ꝑpinquior patri cõmuni: & unde quãvis primogenitus præmortuus feloniam faceret, hoc non nocet fratribus superstitibus cùm non essent ipsius hæredes dum pater viveret, nec ejus hæredes esse

whence it ought to be stated that from such an ancestor the right descended or ought to have descended to such a grandson or grand-daughter or such a brother, if heirs of his body have failed. And whence when a son dies in the lifetime of his father leaving a son and heir or a daughter, since they are under the authority of the grandfather, the right descends forthwith to them. And hence if a declaration is made of the descent, it is incumbent that mention should be made of the degree which is vacant through the death of the son, lest there should be a jump through a degree having been omitted, and let it be stated thus: and whereby such an ancestor was seysed &c., and from such ancestor the right ought to have descended to so-and-so as the f. 374 b.
son and heir, and from so-and-so to the person who now claims as the grandson or the grand-daughter and heir, as if it were otherwise, and he who should die in the lifetime of the father should have committed felony, if he is not computed in the descent, the inheritance and the right of possession might immediately descend to the grandsons or the grand-daughters from the grandfather, notwithstanding the felony of the father, which would be inconvenient. But when the first-born dies in the life of the father without leaving any heir of his own body, but leaving brothers, it is not incumbent to make mention in the declaration of descent concerning the elder-born brother, who has died in the life time of the father, although the right ought to have descended to him, as well because his surviving brothers are as near heirs in degree as regards the seysine as he was who is dead, as well also because the eldest born of those who survive immediately after the death of his predeceased brother begins to be in his place the nearest heir to the common father, and hence although the predeceased first-born son has committed felony this does not hurt his surviving brothers, since they were not his heirs, whilst the father was alive, nor can they be his

possunt, cùm esse desierit in vita patris cōmunis, & antequā ei aliquod jus descenderet. Sed revera forisfaciat talis quicquid habuit tempore feloniæ perpetratæ, si fuerit de felonia convictus, & quicquid ei accidere posset hæredibus suis tunc existētibus, & futuris, et omnibus qui esse possunt hæredes sui; perquisitū vero, si quod frater mortuus habuit, hæredibus suis de carne sua venientibus, & etiam fratribus vel hæredibus remotioribus forisfacit. Poterit etiam in narratione descensus de seysina alicujus antecessoris tempore unius regis fieri mentio et de tempore cujus et narrari usq̃ ad tempus alterius regis, et fieri de eo mentio, & sicut fit narratio descēsus de seysina antecessoris à triavo usq̃ ad trinepotē, ita poterit è converso à trinepote & de seysina ejus usq̃ ad avunculum et amitam et ulterius ascendendo et eorū hæredes ꝑpinquiores descendendo in infinitū. Et qualiter & ad quos fieri debeat descēsus in linea recta descendente, vel linea trāsversali ascendente, cùm jus recta linea reascendere non possit, ꝑ qm descendit, videri poterit inferius de successionibus, dum tamē si ꝑ defectu hæredū recta linea descendentiū fieri debeat narratio descensus revertendo ad lineā trāsversalem ad aliq̃m qui multis retro tēporibus mortuus fuerit, inquiratur, tēpore cujus regis, ut si obierit tēpore regis H. avi vel citra, tenebit descensus, quia de tali tēpore poterit quis ꝓbare jus suum et descensum. Si autem ante tempus talis regis obierit quandocunq̃, inutilis erit actio ꝓpter defectum ꝓbationis.

4. Si abbas vel prior petant per breve de recto.

Si abbas vel prior vel alii viri collegiati, petant terram vel advocationem vel quid tale nomine ecclesiæ suæ, de seysina p̃decessorum suorū dicēdo: Et unde talis abbas p̃decessor suus fuit seysitus in dominico suo &c. Non fiat narratio de abbate in abbatē, vel

heirs since he ceased to exist during the life of their common father, and before any right descended to him. But in truth such a person forfeits whatever he had at the time of the felony, if he was convicted of the felony, and whatever could fall to him and to his heirs then existing or future, and to all who could be heirs to him, but acquisitions of his own, if the dead brother had any, he forfeits for his heirs coming from his own body and even for his brothers and more remote heirs. Mention may also be made in the declaration of descent concerning the seysine of an ancestor in the time of one king and from the time of what king, and the declaration may be continued to the time of another king, and mention may be made of him, and just as a declaration of descent is made from the seysine of an ancestor from the great-grandfather down to the great grandson, so it may be made conversely from the great-grandson and from his seysine up to the uncle and aunt and further in the ascent, and to their next heirs in descent to infinity. And in what way and to whom the descent ought to be made in a right descending line, or in a transverse ascending line, since the right cannot reascend by a straight line, by which it has descended, may be seen below concerning successions, provided however if from failure of heirs descending in a right line the declaration of descent ought to be made in reverting to the transverse line to someone who has been dead a long time back, let it be inquired, in the time of what king, as if he died in the time of king Henry the grandfather or since that time the descent shall hold good, because a person may prove his right and descent from such a time. But if he died at any time before the time of that king, the action will be unavailing on account of the failure of proof.

4. If an abbot or a prior claim by a writ of right.

If an abbot or prior or other collegiate men claim land or an advowson or anything of a like kind in the name of their church, upon the seysine of their predecessors by saying "and whereof such an abbot his predecessor was "seysed as in his own domain &c." The declaration

de priore in priorem, nec de abbatibus vel prioribus mediis fiat mentio, quia in collegiis & capitulis semper idē corpus manet, quamvis successive omnes moriantur, & alii loco ipsorū substituantur, sicut dici poterit de gregibus ovium, ubi semp idē grex, quāvis omnes oves sive capita successivè decedāt, nec succedit aliquis eorū alteri jure successionis, ita q̄ jus descendat hæreditariè ab uno usq̄ ad aliū, quia semp jus ptinet ad ecclesiā,
f. 375. & cū ecclesia remanet: secundum q̄ videri poterit in chartis religiosorum de feoffamēto, ubi manifestē videri poterit, q̄ donatio est facta primò et principaliter Deo et ecclesiæ tali, & secūdariò monachis vel canonicis ibidem Deo servientibus. Et ideo si abbas vel prior, monachi vel canonici successive obierint, domus in ęternū permanebit. Et unde cùm abbas vel prior vel alii viri collegiati petierint terram vel advocationem versus aliquem per breve de recto, p̄posita intentione et fundata (secundum q̄ supradictum est) & nomine ecclesiæ, fiat sic irrotulatio: Talis abbas vel prior, vel alius petit versus talem tantam terram cum pertinentiis &c. ut supra. Vel talem advocationem, scilicet advocationem talis ecclesiæ cum pertinentiis ut jus ecclesiæ suæ. Et unde talis abbas vel prior vel alius p̄decessor suus fuit seysitus in dominico suo ut de feodo et jure tempore pacis, &c. ut supra. Et ita quòd presentavit ad eandem ecclesiam talem clericum nomine R. & qui ad præsentationem suam fuit admissus ad eandem ecclesiam, & inde recepit expletia ad valentiam quinque solidorum & plus, sicut in decimis, oblationibus, & aliis obventionibus. Et quòd tale sit jus suum & ecclesiæ suæ offert &c. Et ita q̄ nulla

should not be from abbot to abbot, or from prior to prior, nor should there be mention of the intermediate abbots or priors, because in colleges and in chapters the same corporation always remains, although they all die successively and others are substituted in their place, as may be said of flocks of sheep, where there is always the same flock, although all the sheep or heads successively depart, nor does any individual of them succeed to another by right of succession, in such a manner that the right descends by inheritance from one to another, because the right always pertains to the church, and remains with the church, according to what may be seen in the charters of f. 375. feoffment of religious orders, where it may be manifestly seen, that a donation is made in the first place and principally to God and such a church, and in the second place to the monks or the canons therein serving God. And accordingly if the abbot or the prior, the monks or the canons successively die, the house remains to eternity. And hence when the abbot or the prior or the other collegiate men claim land or an advowson against any one by a writ of right, the declaration having been propounded and grounded (according to what has been said above) and in the name of the church, let the enrolment be made in this manner: "Such an abbot or prior or "other person claims against so-and-so so much land " with its appurtenances" &c., as above. Or "such an " advowson, to wit, the advowson of such a church with " its appurtenances, as the right of his church. And " whereof such an abbot or prior or other his predeces- " sor was seysed in his domain as of fee and of right in " time of peace" &c., as above. "And in such a manner " that he presented to the said church such a clerk by " name R., and who upon his presentation was admitted " to the said church, and received profits therefrom up " to the value of five shillings and more, as in tithes, " oblations or other obventions." And that such is his right and the right of his church he offers &c. And in

fiat mentio de aliquo descensu, nec de abbatibus nec de prioribus mediis, cùm non sint hæredes nec aliquod jus descendat psonis ipsorum, sicut esset si jus hæreditariè descenderet ad hæredes. Item erit observandum in personatibus, vel præbendis, si persona vel canonicus placitaverit per breve de recto, & tunc dicatur, peto tantū terræ cum pertinentiis &c., ut supra, ut jus ecclesiæ meæ, vel ut jus præbendæ meæ, & unde talis persona vel canonicus (prædecessor meus) fuit seysitus in dominico &c. ut de jure ecclesiæ, vel p̄bendæ suæ &c. ut supra. Et de hac materia inveniri poterit de terñ Paschæ, anno regni regis Henrici decimo quarto in coñ Hunt̄, de W. archdiacano Wellēsis.

5. Si plures sint petentes, omnes nominentur in brevi, sive legitimi, sive bastardi, sive servi.

Si vero petat quis seysinā antecessoris sui p brē de recto, ubi terra vel aliud datū fuerit pluribus simul, sicut pluribus legitimis vel bastardis, pticipibus, hæredibus, vel extraneis. Itē coiunctim sicut in maritagiū viro et uxori vel alio modo, in narratione descēsus, de omnibus oportebit facere mētionē ita. Et unde A. B. C. D. fuerūt seysiti in dominico suo &c. ut supra. Et ita, q̄ tales mortui fuerūt sine hærede de se, accreverūt eorū ptes supstitibus, et ita q̄ jus t̄ræ illius descēdit hæredibus eorum, qui fuerūt supstitęs, scilicet tales. Et quia unus illorū, scilicet talis, obiit sine hærede de se, descēdit totū jus t̄ræ illius tali, et de tali illi qui nūc petit, et q̄ tale sit jus suū offert, &c. Si autē petatur de seysina viri & uxoris, quibus data est t̄ra in maritagiū, vel alio modo, tūc dicatur sic: Et unde A. & B. uxor ejus fuerūt seysiti in

such manner that there be no mention of any descent nor of intermediate abbots or priors, since they are not heirs, nor does any right descend from their persons, as would be the case if the right descended by inheritance to heirs. For it will have to be observed in parsonships or prebends, if the parson or the canon has sued by a writ of right, and it be then said, "I claim so much land "with its appurtenances &c. as above, as the right of "my church, or as the right of my prebend, and whereof "such a parson or canon (my predecessor) was seysed "in domain &c. as by right of his church or of his pre-"bend" &c. as above. And on this matter a case will be found in Easter term in the fourteenth year of the reign of king Henry in the county of Hunts, concerning William, archdeacon of Wells.

5. If there be several claimants let them all be named in the writ, whether legitimate, or bastards, or serfs.

But if any one claims the seysine of his ancestor by a writ of right, where the land or other estate was given to several persons together, as to several legitimate or bastard persons, parceners, heirs or strangers in blood. Likewise conjointly, as for a marriage portion to a man and his wife, or in some other manner, in the declaration of the descent it is incumbent to make mention of all in this manner: "And whereof A., B., C. and D. have been "seysed in their domain &c." as above. And so, because such persons have died without heirs of their bodies, their shares have accrued to the survivors, and so that the right in that land has descended to the heirs of those who were survivors, to wit, so-and-so. And because one of them, to wit, so-and-so, has died without an heir from his body, the whole right in such land has descended to so-and-so, and from so-and-so to him who now claims, and that such is his right he offers &c. But if it be claimed from the seysine of a man and his wife, to whom the land has been given as a marriage portion or in some other manner, then let it be said thus: And whereof A. and B. his wife were seysed in their domain as of fee

dominico suo ut de feodo & jure, & ut de maritagio ipsius B. tēpore talis regis, & tempore pacis &c. ut supra. Et de p̃dictis A. & B. descendit jus terræ illius tali, ut filio & hæredi &c. ut supra. Et de hac materia inveniri poterit in rotulo de termino S. T. anno regis H. iv. in comitatu Wilt̃, de W. de Lusteshille & Wilhelmo de Conelesfend.

6. Qualiter et quibus modis cadit actio per defaltam vel errorem in narratione. f. 375 b.

Et nisi de omnibus fiat mētio cadit actio. Item si ab eo incipiatur narratio qui nunqm fuit in seysina, similiter cadit actio, & petens amittit si hoc fuerit recognitum : ut de term̃ S. T. añ regis H. tertio circa finē rotuli. Itē eodē modo, si erratum fuerit in persona ejus de cujus seysina petitur, ut si quis petat de seysina matris ubi petere deberet de seysina patris, vel è conversò, et idem erit si erratum sit in nominibus ꝑpriis, ut si antecessor vocetur uno nomine & nominandus esset alio, et idē dici poterit de omnibus aliis nominandis in descēsu. Itē idē erit si aliquis omittatur qui nominari deberet, vel si aliquis gradus p̃termittatur. Itē idē erit si erratū fuerit in re petita, ut si una res petatur ꝑ alia. Item si quis omiserit aliquem in narratione descensus, qui plus juris habuerit, vel tantundē quantum habet ille qui petit. Et de hac materia inveniri poterit de term̃ S. Hilarii et de term̃ P. anno regis H. quinto circa finē rotuli. Item si petatur de seysina alicujus per descensum qui villanus fuit, et si excipiatur ipsum esse liberum, ꝓcedit magna assisa inter petētem et tenentem per verba inferius exprimenda.

7. Quibus jus descendere potest.

Et sciendum q liberis hominibus hæredibus à recta linea descendentibus, tam masculis quàm fæminis, p̃sentibus et absentibus, tam illis qui plenæ ætatis

and of right, and as of the marriage portion of the said B. in the time of such a king and in the time of peace &c. as above. And on this matter a case will be found on the roll of the term of Holy Trinity in the fourth year of king Henry in the county of Wilts, concerning William de Lusteshille and William de Conelesfend.

6. In what manner and in what ways an action falls through default or error in the counting.

And unless mention be made of all, the action falls. Likewise if the counting begins from him, who was never in seysine, in like manner the action falls, and the claimant loses, if this has been recognised, as in the term of Holy Trinity in the third year of the king about the end of the roll. Likewise in the same manner if an error has been made in the person of him, from whose seysine the claim is made, as if any one claims from the seysine of his mother instead of the seysine of his father, or conversely; and the same will result, if there has been an error in the proper names, as if the ancestor was called by one name, and he would have to be named by another name, and the same may be said of all the others to be named in the descent. Likewise the same will result if any one be omitted, who ought to be named, or if any grade be passed over. Likewise the same will result if there has been an error in the thing claimed, as if one thing be claimed instead of another. Likewise if one has omitted any one in the counting of the descent, who had more right, or as much right as he, who claims, has. And on this matter will be found a case in the term of St. Hilary and in Easter term in the fifth year of king Henry about the end of the roll. Likewise if the claim be made by descent from the seysine of any one who was a villein, and if it be excepted that he was a free man, a great assise proceeds between the claimant and the tenant by words to be expressed below. f. 375 b.

7. To whom right may descend.

And it is to be known that to free men heirs descending by the right line, male as well as female, present and absent; as well to those who are of full

sunt quàm illis qui sunt infra ætatem. Item tam ideotis quàm discretis. Itē tam mente captis quàm illis qui sunt sanæ mentis, ꝙ quidē dici posset de furiosis, sive gaudeant dilucidis intervallis sive nō, et hoc, quia descēsus juris non requirit consensum hæredis, sed consensum requirit aditio hæreditatis juris descensus, quia absenti & ignoranti descēdit jus, sed seysina sine cōsensu non acquiritur : tales enim, cùm animū nō habuerint acquirēdi in tali statu, acquirere nō possūt seysinā, si furor sit perpetuus, sed si nō perpetuus, tūc poterūt retinere sicut quilibet minor, tutore tamē autore vel per se. Et cū semel possidere inceperint furiosi et mēte capti, nūꝙm in tali statu desineꝝ possūt possidere durante furore, nō magis ꝙm minor infra ætatē. Sed hoc facere non possūt stulti et ideotæ, quia habēt cōsensum et dissensum, qđ quidē nō habēt supradicti. Sed de surdo et muto naturaliter, si oĩno audire nō possūt nec loqui, si autē tarde, illud idē dici poterit, ꝙ acquirere poterūt et retinere et ad alios trāsferre, quia ad minus cōsētire poterit ꝑ signa et ꝑ nut$^{9}$. Sed naturaliť surd$^{9}$ et mutus ꝑ se nec ꝑ ꝑcuratores acquirere possūt seysinā, nec dare possūt, nec sibi aliquid stipulari, quia mutus verba ꝑferre nō potest stipulationis, nec surdus verba stipulātis audiť, sed ꝑ alios sicut tutores vel curatoť, quia animo alieno et corpore. In fine notādū, ꝙ nulli poterit jus descēdere, cujus pater vel mater vel alius antecessor, ꝑ ꝙm fieri debeat descensus, vivus fuit et sanus, bonæ memoriæ vel nō, quāvis antecessor suus se dimiserit et hæreditatē hæredi suo dimiserit. Ex hoc autē non

age as to those who are under age. Likewise to idiots as well as to discerning persons. Likewise as well to persons of unsound mind as to persons of sound mind, which may be said of madmen, whether they enjoy lucid intervals or not, and this, because the descent of a right does not require the consent of an heir, but the acceptance of an inheritance of a right by descent requires consent, because a right descends to a person who is absent and ignorant of it, but the seysine is not acquired without consent: for such persons when they have not had the intention to acquire, cannot in such a state acquire the seysine, if the madness be perpetual, but if it be not perpetual, then they may retain like any minor, his tutor giving authority, or by himself. And when once madmen and persons of unsound mind have begun to possess, they can never in such a state cease to possess during their madness, not more than a minor whilst he is under age. But fools and idiots cannot do this, because they have consent and dissent, which the aforesaid have not. But concerning a person deaf or dumb by birth, if they cannot at all hear or speak, but if slowly, the same thing may be said, that they can acquire and retain and transfer to others, because they can at least consent by signs and by nods. But a person who is by birth deaf and dumb cannot acquire seysine by himself nor by his agents, nor can he give it, nor can he stipulate anything for himself, because a dumb person cannot utter the words of a stipulation, nor can a deaf person hear the words of a stipulator, but he may do it through others as through tutors or curators, because it is done through the mind and body of another person. Finally it is to be noted, that a right cannot descend to any one, whose father or mother or other ancestor, through whom the descent ought to be made, is alive and sound, of good memory or not, although his ancestor has discharged himself and has dismissed the inheritance to his heir. But thereby the heir shall not have an action for the

habebit hæres actioñ hæreditariā, q̄ jus possit ei descēdere in vita antecessoris, licet antecessor in seculo remāserit, vel habitū religionis assūpserit, ut de terñ S. H. añ regis H. vii. Itē poterit jus descēdere feloni post feloñ sicut ante, & cum eo remanebit & ad hæredes descēdet jus, donec cōvincanť[1] de felonia. Sed quo cōvicto nūq̄m descēdet ad hæredes, sed reascēdet ad capitales dños à quibus primò p̄cessit, et sēper sequetur seysina jus merū, & erit tenemētū eschaeta dominoř.

8. f. 376. Quod donatorio nihil juris descendere potest de seysina donatoris vel antecessoris.

Eodē modo, si donatio facta fuerit ab aliquo antecessore qui noïať in descēsu, nūq̄m fiet descēsus ad hæredem donatorii de seysina illius antecessoris donatoris: ut si dicatur, Et unde talis antecessor fuit seysitus &c. et de tali descendit jus terræ illius tali ut filio & hæredi, qui terrā illam dedit tali antecessori petentis. Et unde jus terræ illius descendit ad illum qui nunc petit, ut filio et hæredi, et sic impedit donatio descensum ad petente, per q̄ denegabitur ei actio hæreditaria ex tali descensu. Poterit enim donare quis id q̄ habet, scilicet seysinam & jus, actionē vero hæreditariā cedere nō poterit alicui, ubi necesse erit petere p̄ descensum. Itē nec p̄sentationē. Et de hac materia inveniri possit de terñ S. Hilarii añ regis H. vii. in coñ Canť, de Alano de Bassingborne et Roberto de Insula de advocatione ecclesiæ de Wynpol, & unde idē Alanus petiit advocationem illam de seysina antecessorū p̄dicti Roberti donatoris. Item descēdat jus alicui p̄ modum donationis, exclusis penitus à successione veris primis & p̄ximis hæredibus donatoris, ut

[1] "convincatur" seems to be required by the context.

inheritance, for the right may descend to him in the life of his ancestor, although his ancestor may have remained in this world, or have assumed the habit of a religious order, as in the term of Saint Hilary in the seventh year of king Henry. Likewise the right may descend to a felon after his felony as before, and shall remain with him, and the right may descend to his heirs, until he is convicted of felony. But upon his conviction it shall never descend to his heirs, but shall reascend to the chief lords from whom it first proceeded, and the seysine shall always follow the absolute right, and the tenement shall be an escheat of the lords.

8. f. 376. That no right can descend to the donatory from the seysine of the donor or his ancestor.

In the same manner, if a donation has been made by some ancestor, who is named in the descent, there shall never be a descent to the heir of the donatory from the seysine of that ancestor of the donor, as if it be said: and whence the said ancestor was seised &c., and from so-and-so the right to that land has descended to so-and-so as his son and heir, who gave that land to so-and-so an ancestor of the claimant. And from whom the right to that land has descended to him, who now claims it, as his son and heir, and so the donation impedes the descent to the claimant, wherefore an action of inheritance from such a descent shall be denied to him. For a person may give that which he has, to wit, the seysine and the right, but he cannot cede an action for the inheritance to another, where it shall be necessary to claim by descent. Likewise neither a presentation. And on this matter there will be found a case in the term of St. Hilary in the seventh year of king Henry, in the county of Kent, concerning Alan de Bassingbourne and Robert de Insula, respecting the advowson of the church of Wynpol, and wherein the said Alan claimed that advowson from the seysine of the ancestors of the aforesaid Robert the donor. Likewise a right may descend to any one by means of a donation to the exclusion altogether of the true, first, and next heirs of

supra de advocationibus, sed non per descēsum sed per modum donationis.

## Cap. VII.

1. Proposita intentione actoris, videat tenens an sit jurisdictio et justiciarius qui judicare possit. Item an sit ibi actor, et de cautela circa responsionem tenentis considerandum, et de visu petendo.

Proposita sic intentione petētis & fundata (ut p̃dictum est) à petente, inprimis videat tenens an sit ibi judiciū, scilicet justiciarii qui judicare possunt, & jurisdictionē habent ordinariam vel delegatā, quia ex hoc aliquando poterit cōpetere ei exceptio jurisdictionis perēptoria. Postea vero an sit actor ibi, petēs scilicet an querens, et tūc si actionē habeat, & si actionē habeat, tunc statim ꝓcedere possit, vel ad tēpus remanere debeat in suspenso. Ex hoc enim cōpetere poterit tenenti exceptio dilatoria, vel peremptoria, secūdum q̄ exceptio ꝓposita fuit cōtra ipsam actionē vel contra ꝑsonam agentis. Si autē nihil sit q̄ excipi poterit cōtra p̃dicta, tunc videndū an libellus conventionabilis, breve scilicet sit cōveniens actioni et in nulla sui parte vitiosum, cùm ex hoc dari possit tenenti exceptio. Quæ quidē si per omnia cōveniant, tunc demùm videndū an tenens totam rem teneant q̃ petitur, cùm certa res debeat in juditium deduci, vel si ejus ꝓtem, tunc quotā, vel si omninò nihil, & similiter si res petita pertineat ad jurisdictionē judicantis, & ideo petitur visus rei petitę, quia ex hoc cōpetere poterit exceptio tenenti ne sit actio inanis cū tenēte, cùm rem restituere non possit vel totā, secundū q̄ petitur.

the donor, as above concerning advowsons, but not by descent, but by way of the donation.

## Chapter VII.

1. Upon the declaration of the claimant having been propounded, let the tenant see if there be jurisdiction and a justiciary who can judge. Likewise it is to be considered whether the claimant be there, and concerning the caution about the answer of the tenant, and concerning the claiming a view.

Upon the declaration of the claimant having been thus propounded, and having been supported (as aforesaid) by the claimant, let the tenant first see whether there be there a judgment, to wit, of justiciaries who can judge, and who has ordinary or delegated jurisdiction, for sometimes on this ground he may be entitled to a peremptory exception against the jurisdiction. Afterwards whether the party proceeding be there, the claimant, to wit, or the complainant, and then if he has a right of action, and if he has a right of action, then he may proceed forthwith, or it ought to remain in suspense for a time. For on this ground the tenant may be entitled to a dilatory or a peremptory exception, according as the exception should be taken against the action itself or against the person of the party proceeding. But if there be nothing which can be objected against the aforesaid, then it is to be seen whether the libel be conventional, the writ forsooth suitable to the action and in no part defective, since on this ground the tenant may take an exception. Which things indeed if they are in all respects suitable, then at length it is to be seen whether the tenant holds the entire estate which is claimed, since a thing certain ought to be brought into court, or if a part of it, then how much, and if none at all, and in like manner if the estate claimed appertains to the jurisdiction of the judge, and accordingly a view is claimed of the estate claimed, because on this ground the tenant may be entitled to an exception, lest the action should be fruitless with the tenant, when he cannot restore the estate, or not the entire estate, according to what is claimed. And when all these things thus concur, then let the tenant answer

Et cùm hæc omnia sic cōcurrant, tunc respondeat tenens de principali per se vel per attornatum, nisi warrantū habuerit q̃m vocare voluerit, qui cùm warrantizaverit ut infra dicetur plures cōpetunt ei exceptiones, q̃ principali tenenti non cōpetunt. Et vice versa plures cōpetunt tenenti principali, q̃ nō cōpetunt warranto, si ordinate ꝓponaṅ & rite, quas quidē si tenēs principalis omiserit in initio litis anteqm warrantū vocaverit, ꝑ waranti vocationē tam ꝑ se quàm ꝑ warranto suo ille videbitur tacitè renunciasse, sicut sunt ōnes fere exceptiones ꝓvenientes ex p̃paratoriis juditiorū.

## Cap. VIII.

f. 376 b. 1. De visu petendo, et quare faciendus est visus.

Cum autē onerosum esset de singulis exceptionibus tractare suo loco & per se, utilius & facilius erit (ut videtur) omnes quasi in unum fasciculum colligere, & de omnibus simul tractare per ordinē. Ideo omisso hic tractatu de exceptionibus, tractetur de visu petendo, ut certa res in juditium deducatur, scilicet ut petens ostẽndat & tenētem certum reddat de qua re ipsum velit convenire. Fit autē visus aliquando parti, aliquando juratori, sicut in assisis in causa possessionis, & aliquando in inquisitionibus de rebus, de quibus habetur cōtentio inter partes, & de loco, etiam de facto sicut in transgressionibus, nec refert utrum quis ꝓti adversæ visum faciat de re petita, vel q̃ tantundē valeat, & ita q̃ res per metas certas & ꝑ designationē locorū & nominū, q̃ res certa designetur. Sed re vera si rectus ordo ꝓponēdi exceptiones servetur, primò

concerning the principal question either by himself or by his attorney, unless he have a warrantor whom he would wish to call, who when he shall have warranted as shall be explained below, he is entitled to several exceptions, to which the principal tenant is not entitled. And conversely the principal tenant is entitled to several, to which the warrantor is not entitled, if they be propounded in due order and manner, which indeed if the principal tenant has omitted at the commencement of the suit, before he has called a warrantor, by the calling a warrantor he will seem to have tacitly renounced them as well on his own behalf as on behalf of the warrantor, such as are almost all the exceptions arising from the preparatory proceedings in court.

## Chapter VIII.

f. 376 b. 1. Concerning the making of a view, and wherefore a view is to be made.

But since it would be irksome to treat of the several exceptions in their own place and by themselves, it will be more useful and more easy (as it seems) to collect all as it were into one bundle, and to treat of them all together in order. Accordingly having omitted here the treatment of exceptions, let us treat of making a view, that a thing certain may be brought into judgment, to wit, that the claimant may show and may render the tenant certain concerning what thing he wishes to convene him. But the view is sometimes made by the party, sometimes by the juror, as in assises in a cause of possession, and sometimes in inquisitions concerning which there is a contention between the parties, and concerning the place, likewise concerning the fact as in trespasses, nor does it matter whether a person affords to the adverse party a view of the estate claimed, or what is equivalent to it, and so that the estate shall be described by certain metes and by a description of the places and names as an estate certain. But indeed if a just order of propounding ex-

oportet ꝑponere illas q̃ cõpetunt super jurisdictione judicis, & postea cõfirmare ꝑsonas partiũ, & alias q̃ dilatoriæ sunt, sicut de sum̃onitione & vocatione ad judiciũ, & hujusmodi, & tunc sup editione[1] facienda, et tunc demũ ut res certa in juditium deducatur, & de visu faciendo.

2. De visu faciendo, et cui non visus, scilicet vel quod tantundem valeat.

Videamus inprimis cui faciendus sit visus, & cui denegetur, & ubi nõ jacet visus. Et sciendum q̃ viso eo ubi non jacet, & cui denegetur, per cõsequens videri poterit cui cõpetat visus. Denegabitur quidẽ tenẽti visus in placito de ꝑparte sororum, quãvis in brevi nominentur maneria cum ꝑtinentiis, quia soror petens versus sororẽ nescit designare nec specificare potest per quas ei accidere debeat in ꝑparte, et ꝑpterea nihil aliud petet nisi rationabilẽ ꝑtem suam quæ eam cõtingit de tota terra q̃m sorores participes tenent de hæreditate communi, de qua pater vel alius antecessor com̃unis obiit seysitus ut de feodo, & quamvis objici potest (ut videtur) quòd alii tenent partem de hæreditate de qua ille qui tenens est nihil habet in dominico nec in servitio, & est ratio quòd visus non jaceat in hac parte, quia si plures petant, nulla scire potest per se quæ pars ei accidere debeat ad partem suam. Et ad hoc facit quod habetis inter prima placita post guerram in comitatu Buckingham, de Wilhelmo de Abruncis & Matilda uxore ejus. Contrarium tamen videtur, & quòd visus jaceat, de termino S. Michaelis anno regni regis Henrici secundo post guerram in comitatu Essex, de Matilda de Say & Wilhelmo de Maundevill, quod

[1] *editio*, Declaratio, qua actor de sumptibus et litis expensis solvendis sese obligat. Ducange, Gloss.

ceptions be observed, it is incumbent to propound those in the first place which may be advanced upon the jurisdiction of the judge, and afterwards to confirm the persons of the parties, and others which are dilatory, as concerning the summons and the calling into judgment, and such like, and then upon making a declaration as to costs, and then at length that an estate certain be brought into judgment, and concerning the making a view.

2. Of making a view, and to whom it is not to be granted, to wit or an equivalent.

Let us see in the first place to whom a view is to be granted, and to whom it is to be denied, and where a view does not lie. And it is to be known that upon its having been seen where it does not lie, and to whom it should be denied, it may be consequently seen who is entitled to a view. A view shall be denied to a tenant in a suit for partition amongst sisters, although there be named in the writ the manors with their appurtenances, because a sister claiming against a sister knows not how to describe, nor can she specify by what parts her allotment ought to be made in the partition, and besides she claims nothing else than her reasonable share which belongs to her of the entire estate which the sisters hold as coparceners in the common inheritance, of which their father, or other ancestor died seysed as of fee, and although it may be objected (as it seems) that other persons hold a part of the inheritance, of which he who is tenant holds nothing in domain nor in service, and the reason why a view does not lie in this part is because, if there are several claimants, no one can know by herself which part should fall to her share. And this is borne out by a case which you have amongst the first pleas after the war in the county of Buckingham, concerning William de Abruncis and Matilda his wife. The contrary however appears, and that a view lies, from a case in the term of St. Michael in the second year after the war of the reign of king Henry, in the county of Essex, concerning Matilda de Say and

quidem sic solvitur (ut videtur) quia primum breve loquitur de proparte sororum ubi antecessor nup obiit, & unde sufficit p visu hoc q dicitur de tāta ĩra unde talis qui nup obiit obiit seysitus. In secūdo vero casu, tertia pars hæreditatis petita fuit per aliud breve de recto quā p breve nuper obiit, ubi certa pars nō distringitur, & ideo visus denegandus, quia nescit quæ pars ei accidere debeat certa de recto, & si visum petat de toto, adhuc valere non debet, quia habet q tantundem valet, s. de hæreditate unde talis fuit seysitus qui nuper obiit, & hæc vera sunt, sive cohæredes
f. 377. vel participes petant versus participem sive quamvis extraneā psonā. Et quāvis petatur terra per breve de recto ut de pparte, non erit visus denegandus, cùm non habeat tenens forte id quòd petitur, nec pro visu, quod tantundem valet. Item denegatur visus in placito dotis de terra & tenemento de quibus vir mulieris obiit nuper seysitus, quia habet tenens quod tantundem valet ut infra de eodem. Si autem manerium aliquod petatur sine pertinentiis, visus denegabitur, quia aut tenens statim confiteatur quòd illud teneat vel quòd non teneat, & secundum hoc respōdeat vel quietus recedat, quia manerium satis designatur ex nomine, si autem dubitetur, fiat inquisitio sub pœna loci petiti. Si autem petatur medietas manerii quod non sit divisum nec ptitum etiam sine pertinentiis, denegabitur visus, quia ignorare poterit quæ medietas pertinet ad tenentem. Si autem manerium partitum sit & petatur medietas sine pertinentiis, eodem modo denegabitur visus, si autem cum pertinentiis, aliud

William de Maundevill, which is thus explained (as it seems), because the first writ speaks of a partition between sisters where the ancestor has lately died, and it suffices instead of a view that it is said of so much land of which so-and-so, who lately died, died seysed. But in the second case the third part of the inheritance was claimed by another writ of right than a writ of *Nuper obiit*, where a certain part is not distrained, and therefore a view is to be denied, because he knows not what certain part ought to fall to him of right, and if he claims a view of the whole, still it ought not to avail, because he has what is equivalent, to wit, of the inheritance of which so-and-so was seysed who lately died, and these things are true, whether coheirs or coparceners claim against a coparcener or any f. 377. extraneous person. And although the land be claimed by a writ of right, as in a suit for partition, a view will not have to be denied, when the tenant by chance has not that which is claimed nor instead of a view what is equivalent. Likewise a view was denied in a plea of dower from land and a tenement, of which the husband of the woman died lately seysed, because the tenant has what is equivalent, as below on the same subject. But if a manor be claimed without the appurtenances, a view shall be denied, because let the tenant confess either that he holds it or does not hold it, and according thereto let him make answer or go away acquitted, because the manor is sufficiently designated by its name, but if it be doubted, let an inquest be held under the penalty of the place claimed. But if the mediety of a manor be claimed, which has not been divided nor partitioned even without its appurtenances, a view shall be denied, because he may be ignorant which mediety belongs to the tenant. But if the manor has been partitioned and the mediety be claimed without its appurtenances, in the same manner a view shall be denied, but if with its appurtenances, it

erit, ut infra dicetur. Item cùm medietatem petat quis alicujus manerii, cum sit indivisum cum pertinentiis vel sine, si visum petat de toto, non ei denegabitur ad similitudinem dotis, secundum quod inferius dicetur. Denegabitur etiam visus intrusori, cùm res specificata fuerit in quam se intruserit sine pertinentiis, vel si fiat quod tantundem valet ut supradictum est: & ideo maximè si recens fuerit intrusio, recens dico unius anni vel minoris temporis, & hoc cùm ille qui jus habet in re statim post intrusionem sibi perquisiverit in crastino vel infra septimanam, nisi rationabili de causa fuerit impeditus. Denegabitur etiam quandoque visus in petitione dotis, ubi mulier nomine dotis petierit aliquod manerium sine pertinentiis, unde nominatim dotata fuit, ut si dicat, Peto tale manerium ut dotem meam, unde A. quondam vir meus me nominatim dotavit ad ostium ecclesiæ die quo me desponsavit, & hoc casu tenens nullū visum habebit ratione ꝑtinentiarum q̃ non nominantur; q̧ quidem aliud esset si cum ꝑtinentiis, quia posset mulier petens tales ostendere ꝑtinentias, de quibus tenens nullā ꝑtem advocaret. Item in peẽtione dotis denegatur visus ꝑpter incertitudinem, ut si nomine dotis petat mulier tertiam ꝑtem alicujus manerii cum ꝑtinentiis, vel sine, visum nō habebit, quia nullam certam partē designare potest. Si autē visum petierit de toto tenemento unde petit tertiā partē, visum habebit. Item si cùm tenens visum petierit respondet mulier q̧ non petit nisi tertiam

will be another thing, as will be explained below. Likewise when a person claims the mediety of any manor, when it is undivided, with its appurtenances or without them, if he claims a view of the whole, it shall not be denied to him after the likeness of dower, according to what will be explained below. A view shall also be denied to an intruder, when the estate has been specified, into which he has intruded himself, without its appurtenances, or if there be done what is equivalent as has been explained above; and therefore more particularly, if the intrusion shall be recent, I mean recent when it has been for one year or a less time, and this when he who has the right in the estate forthwith after the intrusion has made a claim for himself on the morrow or within a week, except he has been impeded by a reasonable cause. A view shall also be sometimes denied in a claim of dower, where a woman in the name of dower has claimed some manor without its appurtenances, wherewith she has been specifically endowed, as if she should say, I claim such a manor as my dower, wherewith A., formerly my husband, specifically endowed me at the door of the church on the day on which he espoused me, and in this case the tenant shall have no view in regard of the appurtenances which are not named, which would be otherwise, if with the appurtenances, because the woman claiming might point out such and such appurtenances, no part of which the tenant would avow. Likewise in a claim for dower a view is denied on account of uncertainty, as if in the name of dower a woman claims a third part of any manor with its appurtenances or without them, she shall not have a view, because she cannot designate any certain part. But if she has claimed a view of the whole tenement whereof she claims a third part, she shall have a view. Likewise if when the tenant has claimed a view the woman answers that she does not claim other than the third part of that of which

partem de eo unde vir suus seysitus obiit ut de feodo, & tenens totum teneat & vir recenter obiit, tenēs visum non habebit, cùm habeat q̄ tantundē valet, scilicet unde vir suus obiit seysitus. Itē denegabitur visus mulieri, si hæres agat cōtra eam de dotis amēsuratione, cùm ipsa totū teneat de quo petitur amensuratio, & ratione præmissa, quia vir suus nuper obiit inde seysitus in tali villa, & hoc verum est, nisi ipsa aliud tenementum teneat in eadem villa. Item nec jacet visus ꝑpter incertitudinē, sive nominentur pertinentiæ sive non, ut si quis sic petat terram aliqm, & sic dicat: Peto tantā terrā cum ꝑtinentiis, s. quicquid tenens tenet ī tali villa ultra x. libratas terræ et de dono talis, quia t̄ra q̄ petitur specificari nō potest,
f. 377 b. nisi prius facta extetione x. libratarū & viso & ꝑbato quantum terræ talis teneat in tali villa, tūc primò ꝓcedat sine visu de residuo & p̄ambula erit extensio, ut inter placita quæ sequuntur regem corā S. de Segrave, de Thoma de Dunholm̄ cive Londoñ, et hoc verum esse poterit nisi visum petat de toto unde petit residuū ultra x. Plures etiam possunt esse tenentes successivè quorū nullus visum habebit, si petierit, nisi tantum primus tenens, verbi gratia, A. petit versus B. certam terram cum pertinentiis ut jus suum, si B. visum petat visum habebit, & nullus alius, quamvis warrantum vocaverit usq̄ ad x. Item nec tenens nec warrantus, ut si idem B. antequam visum petat vocaverit C. ad warrantum, & C. cùm venerit per sum̄onitionem, antequàm warrantizaverit vel post, visum petat,

her husband died seysed as of fee, and the tenant holds the whole and the husband has recently died, the tenant shall not have a view, since he has what is equivalent, to wit, that whereof the husband died seysed. Likewise a view shall be denied to the woman, if the heir proceeds against her for an admeasurement of dower, when she holds the whole of which an admeasurement is claimed, and for the reason above stated, because her husband lately died seysed thereof in such a vill, and this is true, unless she holds another tenement in the same vill. Likewise no view lies on account of uncertainty, whether the appurtenances be named or not, as if a person should thus claim a certain land and should thus say: I claim so much land with its appurtenances, to wit, whatever the tenant holds in such a vill beyond ten pounds worth of land of the donation of so-and-so, because the land which is claimed cannot be specified unless upon an extent having been made of the ten pounds worth, and upon a view having been made and f. 377 b.
proof having been given as to how much land so-and-so holds in such a vill, then let him proceed concerning the residue, and the extent shall be perambulatory, as amongst the pleas which follow the king before Stephen de Segrave, concerning Thomas de Dunholm, a citizen of London, and this may be true unless he claims a view of the whole whereof he claims the residue beyond ten [pounds worth]. There may also be several tenants successively, none of whom shall have a view, if he has claimed it, except only the first tenant, for instance. A. claims against B. a certain land with its appurtenances as his right, if B. claims a view he shall have a view, and no one else, although he may have called a warrantor up to ten. Likewise neither the tenant nor the warrantor, as if the said B. before he has claimed a view has called C. to warrant, and C. when he has come through a summons, before he has warranted or afterwards claims a view, he shall not have a view, because

visum non habebit, quia tenetur warrantus ad chartam suam respondere, vel ad chartas antecessorum suorū, in quibus specificatur terra illa petita. Et etiam si tenens chartas non habeat, scit aut scire deberet warrantus quam terrā tenens de eo tenuerit, & de qua terra cepit homagium & servitium illius, qui eum ad warrantū vocaverit, & cùm per juditiū vel alio modo warrantizaverit, scire debet warrantus q̃ & qualis sit terra de qua vocatus sit ad warrantū, & quanta. Et sic fiet de pluribus warrantis quod de uno dicitur, quorum nullus habebit visum, donec in placito illo perventum fuerit ad duellum, si tamen inde contingat duellum vadiari, & tunc post duellum sic vadiatū, & post vadia recepta fiat visus campionibus, & quia visus non processit in toto placito, dicatur eis q̃ infra diem eis datū terram illam videant, & hoc est p̃ sacramento suo q̃ inde facient de visu suo, secundùm q̃ inferius videri poterit de sacramentis campionum. Item non jacet visus postquàm semel terra capta fuerit in manum dñi regis per defaltā, quia sufficit quod tantundem valet, quia petens designare debet visoribus qualitatem terræ & quantitatem, quid & quantum petat, & per quas metas, & cùm sic capta fuerit eodem modo & in eadem quantitate peti debet per plevinam, quod quidem sufficit p̃ visu. Conceditur tamen quandoque visus post defaltā ex abundanti & hoc p̃ sacramento campionum, ut de term̃ S. T. anno regis H. quarto.

3, Si post visum petitum se essoni-

Item denegatur quandoq̃ visus, ut si semel concedatur & antequam tenens visum habuerit ad diem suum fecerit se essoniari, cùm calumniare deberet q̃ visum

a warrantor is bound to answer to his own charter or to the charters of his ancestors, in which the land which is claimed is specified. And even if the tenant has no charters, the warrantor knows, or ought to know, what land the tenant holds from him, and concerning what land he has received the homage and the service of him, who has called him to warrant, and when he has warranted it by a judgment, or in some other manner, the warrantor ought to know what and what sort of land it is which he is called to warrant, and how much. And it shall so be done with several warrantors as is said of one, none of whom shall have a view until in that plea they have arrived at a duel; if however it should happen that a duel should be waged thereon, then after the duel has been so waged and the sureties have been given, let a view be granted to the champions, and because a view has not preceded throughout the whole plea, let it be said to them that they should view the said land within a certain day appointed to them, and this is upon their oath which they shall make regarding their view, according to what may be seen below concerning the oaths of champions. Likewise a view does not lie after the land has been taken into the hand of the lord the king by default, because it suffices that it is worth so much, because the claimant ought to designate to the viewers the quality of the land and the quantity, what and how much he claims, and by what metes; and when it has been thus taken it ought to be claimed in the same manner and in the same quantity by a plevine, which indeed suffices instead of a view. A view however is sometimes allowed after a default as a grace, and this in the place of the oath of the champions, as in Holy Trinity term in the fifth year of the king.

3. If after a view has been claimed the tenant has essoined

Likewise a view is sometimes denied, as if it be granted and before the tenant has had a view upon his own day he has caused himself to be essoined, when he ought to aver by a quirk that he has not had a view, according

averit tenens, et postea dicat quod visum non habuerit.

non haberet, secundum q̄ fit de sum̄onitionibus cûm quis se essoniaverit, nisi calumniare deberet brevem sum̄onitionem.

## Cap. IX.

1. Si de rebus incorporalibus jaceat visus, sicut de juribus.

Dicitur supra ubi visus non jacet in rebus corporalibus, quæ videri possunt, & tangi, & ratio quare. Nunc autem videndum si de rebus incorporalibus possit aut debeat fieri visus, sicut de juribus quæ insunt in rebus corporalibus, sicut de jure advocationis, de jure pascendi, eundi, & agendi, & hujusmodi. Et quamvis hujusmodi jura videri non possunt cùm sint
f. 378. invisibilia, nec palpari sicut corpora, tamē cum sine corpore vel subjecto quibus insunt esse non possunt, res illæ videri possunt & palpari, & unde sufficit p̄ visu quòd res corporatæ in quibus jura consistunt designentur, vel per visum vel per quod tantundem valet. Per visum, ut si cui competat jus pascendi in fundo alieno, agendi, eundi, vel hujusmodi, sufficit si loca videantur in quibus jura sunt & consistunt, & sufficit si visus factus sit juratoribus, & eodem modo dici poterit de injuriis, sufficit enim si juratores videant loca & facta, quamvis ipsa injuria congruè loquendo videri non possit, non magis quàm jus. Est enim jus, et ejus contrarium quod est injuria. Est enim injuria omne illud quod non est jus, & quod nō magis videri poterit quàm ipsum jus. Si quis enim in terris & tenementis quæ habuit ad terminum vitæ vel annorum, vel nomine alieno, sicut nomine custodiæ, & hujusmodi, vastum fecerit, non cōceditur visus ei de quo queritur in juditio. Sufficit enim si fiat visus inquisitoribus, nec etiam conceditur visus in actione personali, ut si custodia & maritagium ali-

to what takes place concerning summonses, when a person has essoined himself, unless he ought to aver by a quirk a short summons.

himself, and afterwards should say that he has not had a view.

## Chapter IX.

It has been said above where a view does not lie of corporeal things, which may be seen and touched, and the reason wherefore. Now indeed it is to be seen, if a view can and ought to be made of incorporeal things, as of rights which are inherent in corporeal things, as of the right of advowson, of the right of fishing, of going and of driving, and such like. And although these rights cannot be seen since they are invisible, nor can they be handled like bodies, nevertheless since they cannot exist without the body or subject in which they are inherent, those things may be seen and handled, and hence it suffices instead of a view that the corporeal things in which those rights exist should be designated either by a view or by what is equivalent. By a view, as if a person be entitled to the right of feeding on another's ground, or of driving, or of going, or such like, it is sufficient if the places be seen in which the rights are and exist, and it suffices if a view has been made by the jurors, and in the same way it may be said of injuries, for it is sufficient, if the jurors see the places and the acts, although the injury itself cannot strictly speaking be seen, no more than a right. For there is a right and its contrary, which is an injury. For an injustice is every thing which is not a right and which cannot be seen any more than a right. For if any one has caused waste in lands or tenements which he has had for the term of his life or a term of years, or in another person's name, as in the name of guardianship or such like, a view is not allowed to him of that regarding which complaint is made in judgment. For it is sufficient if a view is made by the inquest, nor again is a view allowed in a personal action, as if the guardianship or maritage of

1. If there lies a view of incorporeal things, as of rights.

f. 378.

cujus petatur, non est necesse specificare vel designare quantitatem hæreditatis. Si autem quis sic dicat: custodiam tantæ terræ, videtur quòd tunc sit aliud dicendum.

2. Cum jus advocationis petatur, et plures sint ecclesiæ.

Cum autem jus advocationis petatur, cûm illud jus videri non possit, sufficit si corpora designētur in quibus hujusmodi jus consistit, & sufficit pro visu, ut si quis dicat: peto advocationem ecclesiæ S. Mariæ de tali villa cum pertinentiis, & non sit nisi unica ecclesia S. Mariæ in eadem: sufficit pro visu, quia jus illud esse nō poterit in alia ecclesia. Si autem diversæ sint ecclesiæ, scilicet S. Petri & ecclesia S. Andreæ, tunc assignari poterit ex nomine cui illarum insit illud jus advocationis quæ petitur. Si autem plures sint ecclesiæ cōstructæ sub nomine unius sancti, tunc oportet ita designare ex loco in qua ecclesia sit illud jus advocationis q̃ petitur, ut si dicat: peto advocationē ecclesiæ quæ sita est in vico tali versus orientē, vel versus occidentē. Si autem sit qui dicat quòd ratione ptinentiarum cōpetat visus, cùm dicatur peto advocationem illius ecclesiæ cum ptinentiis: sciendū est quòd nō fit relatio pertinentiarum ad ipsum jus, imo ad ecclesiam, secundum quod cōstruitur lignis & lapidibus, & non secundum q ingressus & egressus ptinet ad jus pascendi et hujusmodi, & restitutio ad jus eundi, nec obstat quod dicitur q in assisa ultimæ p̃sentationis juratores videre debeant ecclesiam illam ad quā fit p̃sentatio, quia nihil hic agitur de jure, sed q ecclesia ad quam præsentatur designetur, secūdum quod lignis & lapidibus construitur, et quæ quidem omnino sunt diversa, licet quodammodo sint con-

any one is claimed it is not necessary to specify or designate the quantity of the inheritance. But if some one should thus say, the guardianship of so much land, it seems that something different ought to be said.

2. When the right of advowson is claimed, and there are several churches.

But when the right of advowson is claimed, since that right cannot be viewed, it is sufficient if the bodies be designated in which a right of this kind consists, and it suffices for a view, as if a person should say, I claim the advowson of the church of St. Mary in such a vill with its appurtenances, and there is but one church of St. Mary in the said vill: it suffices instead of a view, because that right cannot exist in any other church. But if there be divers churches, to wit, of St. Peter and the church of St. Andrew, then it can be assigned by name to which of the churches that right of advowson which is claimed applies. But if there are several churches constructed under the name of one saint, then it is incumbent to designate by the place to which church that right of advowson which is claimed applies, as if he should say, I claim the advowson of the church which is situated in such a street towards the east or towards the west. But if there be some one who says that a view is appropriate in regard of the appurtenances, since it is said, I claim the advowson of that church with its appurtenances: it is to be known that there is no relation of the appurtenances to the right itself, but to the church according as it is constructed of timber and stone, and not according as the entry or the exit pertains to the right of pasture and such like, and restitution to the right of going, nor is it an obstacle that it is said in an assise of last presentation that the jurors ought to view that church to which the presentation is made, for there is no question here of right, but that the church to which a presentation is made should be designated, according as it is constructed of timber and stone, and which things are altogether diverse, although they are somehow connected. And

nexa. Et aliquando petitus fuit visus de advocatione ecclesiæ, quia diversæ fuerunt ecclesiæ in eadem villa, sed postea per juditium revocatus, & ita quòd breve de visu remansit, quia ecclesia in qua advocatio petebatur alio modo designari potuit per hoc quod tantūdem valuit, scilicet advocationem eccelsiæ beati Petri: de hac materia de term̄ Sanctæ T. añ. ii. post guerram, in comitatu Cant., de abbate de Nutlegh.

3. Si jus advocationis capi debeat in manum regis.

f. 378 b.

Sed cûm jus advocationis ecclesiæ incorporale sit, & per defaltam tenentis aliquando præcipiatur vic. quòd illam capiat in manum domini regis, cùm sit incomparabile, invisibile, inpalpabile. Et q palpari non potest, qualiter potest in manum domini regis capi, q videtur esse impossibile? Responsio. Revera nullum jus esse poterit sine corpore & subjecto cui adhæreat. Si autem dicatur q adhæreat fundo vel tenemento in quo ecclesia sita est, tunc videtur prima facie quòd capi debeat fundus & p cōsequens jus advocationis ecclesiæ illius, sed fundus non capitur, quia jus advocationis fundo non adhæret im̄ediatè, sed per medium, quod est ecclesia talis, secundum quod cōstruitur lignis & lapidibus, & secundum quod superius dictum est; Jus advocationis talis ecclesiæ, & non jus advocationis talis fundi, & ideo cùm jus advocationis adhæreat ecclesiæ dicatur vicecomiti quòd capiat ecclesiā in manum dñi regis simplici captione, & per cōsequens capit id quod inest corpori, sicut videri poterit de jure pascendi & hujusmodi.

sometimes the view of the advowson of a church was claimed, because there were divers churches in the same vill, but afterwards it was revoked by a judgment, and so that the writ for a view was stayed, because the church of which the advowson was claimed could be designated in some other manner by this which was equivalent, to wit, the advowson of the church of the Blessed Peter. Concerning this matter there is a case in Holy Trinity term in the second year after the war, in the county of Kent, concerning the abbot of Nutlegh.

3. If the right of advowson ought to be taken into the hand of the king. f. 378 b.

But since the right of advowson of a church is incorporeal, and through the default of the tenant it is sometimes enjoined to the viscount that he should take it into the hand of the lord the king, when it is unapparent, invisible, impalpable. And what cannot be handled, how can it be taken into the hand of the king, which seems to be impossible? The answer. In truth no right can be without a body and a subject to which it adheres. But if it be said that it adheres to the land or the tenement in which the church is situated, then it appears at first sight that the land ought to be taken, and as a consequence the right of advowson of that church; but the land is not taken, because the right of advowson does not adhere immediately to the land, but through a medium, which is the said church, according as it is constructed of timber and stones, and according to what has been said above: The right of advowson of the said church, and not the right of advowson of the said land, and accordingly since the right of advowson adheres to the church, let it be said to the viscount that he should take the church into the hand of the king by a simple caption, and as a consequence he takes that which is in the body, as may be seen concerning the right of pasture, and such like.

4. Ubi visus jacet vel tantundem.

Ubi visus jacet? & dico quòd jacet generaliter. Inprimis de omnibus terris petitis per breve de recto aperto, vel per alia brevia clausa in quibus pervenitur ad duellum, & maximè propter sacramentum campionum (ut prædictum est), & eodem modo si ad magnam assisam. Item jacet ubicunque res corporalis petitur, quæ aliter designari non possit, quòd certa res deducatur in juditium, nisi videatur directè vel indirectè: directè dico, ut si terra vel aliqua res corporalis petatur sine pertinentiis ꝑpter certitudinem corporis, quia tenens per hoc statim scire potest, utrum tale corpus teneat totum vel ejus partem vel nihil. Indirectè, ut si alio modo designari possit per id quod tantundem valet quantum valet visus, & per quod certitudo haberi possit quæ & qualis sit res quæ petitur, ut si dicatur: peto tantā terram cum pertinentiis unde talis nuper obiit seysitus, vel quam talis nup warrantizavit, vel totam terram quam talis tenet in eadem villa (si plus nō tenuerit) vel in com̄ vel in tali loco, vel talem q̄ capta fuit in manum dn̄i regis, & per tenentem replegiata, vel talē quam ego vel alius tibi tradidit, vel de qua disseysinā fecisti, vel quas tenes de dono talis, vel de ballivo dn̄i regis, & hujusmodi. Item jacet in placito, quo warranto, ubi actio datur tam in rem qm in ꝑsonam ratione pertinentiarum. Et de eschaetis domini regis de terris Normanniæ. Item jacet de tenementis de quibus aliquis redditus ꝑvenit. Et si de redditu petatur, non jacet, nec etiam erit redditus liberum tenementum nisi ex tenementis jus proveniat, quia de camera nō, vel hujusmodi. Itē jacet visus de tenemento in quo quis com̄uniam petit ꝑ breve de recto, & jus pascendi, nisi

Where does a view lie? And I say that it lies generally. In the first place respecting all lands, which are claimed by an open writ of right, or by other close writs in which a duel is arrived at, and chiefly on account of the oath of the champion (as said above), and in the same manner if a great assise is arrived at. Likewise it lies wherever a corporeal thing is sought, which cannot be otherwise designated, so that a certain thing may be brought into judgment, unless it be viewed directly or indirectly. I mean by directly, as if a land or other corporeal thing be claimed without its appurtenances, on account of the certainty of the body, because the tenant may know thereby immediately whether such a body hold the whole or a part of it, or nothing. Indirectly, as if it may be designated in another manner by that which is equivalent to a view, and whereby a certitude may be acquired what and of what sort is the thing which is claimed, as if it be said: I claim so much land with its appurtenances whereof so-and-so died seysed, or which so-and-so lately warranted, or the whole land which so-and-so holds in the said vill (if he has not held more) or in the county or in such a place, or such as was taken into the hand of the lord the king, and replevined by the tenant, or such as I or another delivered to you, or of which you have made a disseysine, or which you hold by the donation of so-and-so, or from the bailiff of the lord the king, or such like. Likewise it lies in a plea of *Quo warranto*, where an action is given as well against the thing as against the person in regard of the appurtenances. And respecting the escheats of the lord the king from the lands of the Normans. Likewise it lies respecting tenements from which any rent results. And if the claim be for rent, it does not lie, nor will rent be a free tenement unless a right results from the tenement, because it does not lie for a chamber or such like. Likewise a view lies concerning a tenement in which a person seeks a community through a writ of right, and a right of pasture, unless it can be otherwise desig-

4. Where a view lies, or its equivalent.

aliter designari possit ut supradictum est, quia poterit ille qui cōvenitur tenementum habere, in quo petens nullam cōmuniam clamare poterit. Item jacet visus si secta petatur ab aliquo, si plura habeat tenementa in eadem villa, ut sciri possit & certificari ratione cuius tenementi secta petatur, vel cùm plures petat, non debeat tenens nisi unam, secundum q̄ videri poterit de terr̄ S. T. anno regis H. 2 post guerrā, in cō̄ Kanc., de magistro militiæ Templi. Et eodem modo in juribus quibusdā jacet visus, si res vel loca quib$^{9}$ jura insunt designari nō possūt p̄ id q̄ tantundē valet, sicut in cōmunia pasturæ & hujusmodi.

## Cap. X.

f. 379. 1. De irrotulatione post visum concessum.

Cum autē visus denegari nō possit, tunc fiat irrotulatio hoc modo, A. petit versus B. tantā terram cum p̄tinentiis in tali villa ut jus suū &c., vel tantum redditus, vel talem cōmuniam pasturæ, vel q̄ ei faciat sectam, et hujusmodi &c. Et B. venit & petit visum de tenemento unde talis redditus p̄venit, vel de tenemento in quo clamat talē pasturam, vel de tenemento de quo A. petit sectam & hujusmodi, secundum q̄ brevia originalia habeat. Dies datus est eis in oct̄ & interim &c. Et eodem modo si dos petatur vel aliquid per breve de ingressu, tūc sic: A. petit versus B. tantam terrā cum p̄tinentiis in tali villa ut dotem suam, vel ut jus suum, et in quam idem B. non habet ingressum nisi per talem &c. Et sic variatur irrotulatio secundū varietatē placitorum, & secundū hujusmodi irrotulationes variantur brevia quæ talia sunt.

nated as aforesaid, because he who is convened may have a tenement in which the claimant cannot claim any community. Likewise a view lies if a sect be claimed by any one, if he has several tenements in the same vill, that it may be known and certified in regard of which tenement the sect is claimed, or when he claims several, the tenant owes only one, according to what may be seen in Holy Trinity term in the second year of king Henry after the war, in the county of Kent, concerning the master of the knights of the Temple. And in the same manner a view lies in certain rights, if things or places, in which rights are inherent, cannot be designated through that which is equivalent, as in common of pasture and such like.

## Chapter X.

f. 379.

1. Concerning the enrolment after a view has been granted.

But when a view cannot be denied, then let an enrolment be made in this manner: A. claims against B. so much land with its appurtenances in such a vill as his right, &c., or so much rent, or so much common of pasture, or that he make him a sect, and such like, &c. And B. comes and claims a view of the tenement from which such a rent proceeds, or of the tenement in which he claims such a pasture, or of the tenement concerning which A. claims a sect, and such like according to what the original writs contain. A day is given to them in the octave, and meanwhile, &c. And in the same way if dower is claimed or anything by a writ of entry, then thus: A. claims against B. so much land with its appurtenances in such a vill as her dower, or as her right, and into which the said B. has no entry except through so-and-so, &c. And so the enrolment is varied according to the variety of the pleas, and according to enrolments of this kind the writs are varied, which are of this kind.

2. Brevia de visu faciendo, scilicet, de toto.

Rex vic. salutē. Præcipimus tibi q̄ sine dilatione habere facias B. visum de tanta terra cum p̄tinentiis in N. quam A. de N. in curia nostra coram justic. nostris apud W. clamat ut jus suum versus prædictū B., et dic quatuor militibus ex illis qui visui illi interfuerint, quòd sint corā eisdē justic. nostris apud W. vel coram nobis ubicunq̄ tunc fuerimus in Anglia, tali die &c. ad testificandum visum illum. Et habeas ibi nomina militum & hoc breve. Teste &c. Variantur autem hujusmodi brevia multipliciter, & sic s.: habere facias visum B. de tenemento in tali villa, unde redditus x. solid̄ cum p̄tinentiis p̄venit, quem redditum A. de N. in curia nostra &c. clamat ut jus suū versus p̄dictū B., et dic &c. ut supra, vel sic: visum de tanta terra cum p̄tinētiis in N. unde B. quæ fuit uxor C. nominatim dotata fuit.

3. Si de parte, unde dotata fuit.

Vel si forte aliquam certam p̄tem & separatam petat p̄ diviso, tunc sic: visum de tanta t̄ra &c. quā A. q̄ fuit uxor D. in curia &c. clamat in dotē versus eum. Si autē clamaverit tertiā p̄tē incertā & indeterminatā alicujus totius, tunc sic: visū de tanta terra cum p̄tinentiis &c. unde A. quæ fuit uxor C. in curia nr̄a &c. clamat tertiā p̄tem in dotē versus eum. Et dic &c. Si autē placitetur de cōmunia pasturæ per b̄re de recto, Quo jure, tunc sic.

4. Si ad breve de recto quo jure petatur visus de communia pasturæ.

Præcipimus tibi q̄ sine dilatione habere facias A. visum de cōmuna pasturæ in tali villa quā B. de N. clamat ut p̄tinētē ad liberū tenemētum suū in eadē villa, vel in alia, versus eundē A., & unde idē B. sum̄onitus est in eadē curia nr̄a ad ostēdendū quo jure talē cōmuniam pasturæ clamat in terra ipsius A., desicut idē A. nullā cōmuniam habet in terra ipsius B.,

2. Writs to make a view, to wit, of the whole.

The king to the viscount greeting. We enjoin you that without delay you cause B. to have a view of so much land with its appurtenances in N., which A. de N. in our court before our justiciaries at Westminster claims as his right against the aforesaid B., and say to four knights of those who have taken part in that view, that they be present before our said justiciaries at Westminster, or before us wherever we may be in England on such a day, &c., to testify to that view. And have there the names of those knights and this writ. Witness, &c. But writs of this kind are varied in manifold ways, and thus, to wit: cause B. to have a view of a tenement in that vill, from which a rent of ten shillings with appurtenances is derived, which rent A. de N. in our court &c. claims as his right against the aforesaid B., and say as above: or thus, a view of so much land with its appurtenances in N., wherewith B. who was the wife of C. has been specifically endowed.

3. If of a part, with which she was endowed.

Or if by chance a certain separate part, as her division, then thus: a view of so much land, &c., which A. who was the wife of D. in our court claims as her dower against him. But if she claims a third uncertain and indeterminate part of a certain whole, then thus: a view of so much land with its appurtenances, &c., and whereof A., who was the wife of C., in our court, &c. claims the third part for her dower against him, and say, &c. But if the plea be for common of pasture through a writ of right, *quo jure* then thus:

4. If upon a writ of right *quo jure* a view be claimed concerning common of pasture.

We enjoin you that you cause A. without delay to have a view concerning common of pasture in such a vill, which B. de N. claims as appurtenant to a free tenement of his in the said vill or in another, against the said A., and whereof the said B. has been summoned in our said court to show by what right he claims such a common of pasture in the land of the said A., since the said A. has no common of pasture in the land

nec idē B. ei servitiū facit, quare ibi cōmuniā habere debeat, & dic &c., vel sic: visum de cōmunia pasturæ in tali villa, qm B. in curia nr̃a corā justic. &c. clamat versus eundē A. ut ptinentē ad liberū teñtū suū in eadē villa, vel in alia, & unde idē A. dicit q̄ p̃dictus B. nullā cōmuniā ibi habere debet, eo q̄ idē B. nullā cōmuniam in t̃ra ipsius habet, nec idē ei servitiū facit, quare cōmuniā habere debeat & dic &c. Et sic semp formāda erūt brevia de visu secūdū formā breviū originaliū. Si autē fieri debeat visus in brevi
f. 379 b. quo warranto teneat quis terrā aliqm q̃ debeat esse eschaeta dñi regis, tunc sic: visum de tanta terra cum ptinentiis in tali villa, & unde idem talis sum̄onitus est ad ostendendū quo warranto tenet tantam terrā cum ptinentiis in tali villa quam nos in curia nostra clamamus versus eum ut eschaetam nostram de terris Normannorum.

## Cap. XI.

1. Ad diem datum post visum habitum reincipiatur essonium.

Ad alium vero diē post visum cōcessum & factū, reincipiāt partes si voluerint omnia essonia sua, tam petens quàm tenens. Et sive venerint sive non, vic. dicere dibet iv. militibus, qui visui illi interfuerint, q̄ sint ad diē datum ad testificandum visum illum. Ad q̃m diem sive partes venerint, sive se essoniaverint, cûm visus testatus fuerit per quatuor milites visores,

of the said B., nor does the said B. do to him any service wherefore he ought to have a common there, and say &c., or thus: a view of common of pasture in such a vill, which B. in our court before our justiciaries &c. claims against the said A. as appertaining to his free tenement in the said vill or in another, and whereof the said A. says that the said B. ought to have no right of common, inasmuch as the said B. has no community in his land, nor does he do to him any service wherefore he ought to have a right of common, and say &c. And writs for making a view are always to be formulated according to the form of the original writs. But if a view ought to be made in a writ of *Quo warranto* a person holds a certain land which ought to be an escheat of the lord the king, then thus: a view of so much land with the appurtenances in such a vill, and whereof the said so-and-so has been summoned to show by what warrant he holds so much land with its appurtenances in such a vill, which we claim in our court against him as our escheat of the lands of the Normans. f. 379 b.

## Chapter XI.

But upon another day after a view has been allowed and has been made, let the parties recommence, if they wish, all their essoins, as well the claimant as the tenant. And whether they have come or not, the viscount ought to say to the four knights, who have taken part in that view, that they should be present on an appointed day to testify to that view. Upon which day whether parties have come or have essoined themselves, when the view has been attested by the four knights the viewers, reliance shall always be had upon their

1. At the appointed day after a view has been had an essoin may be recommenced.

Britton, ii. cxviii. § 8.

semp stabitur eorum recordo, & si forte essoniū interjectū fuerit, fiat mentio semper in essonio q̄ visus testatus sit, & si forte testatus nō fuerit, & tenēs ad diē suū venerit, & docere possit q̄ visum nō habuerit, habebit aliū diē, nisi ipse petens docuerit cōtrarium, sub p̄iculo joci partiti.

Cf vol. iii. p. 311.

2. Si loquela posita fuerit ad magnam curiam de comitatu, et contentio fuerit de visu habito vel comitatu.

Cùm autē placitū à com̄ translatū fuerit ad magnā curiā, & cùm visum habuerit in com̄, objiciatur ei in magna curia q̄ visum habuerit in com̄, inquiratur de petente si de hoc ponere se voluerit super recordū com̄, qui de hoc habet recordum, vel non, & quo casu si petens hoc voluerit, fiat recordū de hoc p̄ com̄, & veniat recordū corā justic.; sed raro cōtingit q̄ petēs eligat viā istā ad placitum suū differendū, cûm coīmodius sit ei iterum visum cōcedere, quâm de visu habito ad inquisitionem per comitatum p̄cedere.

## Cap. XII.

1. Qualiter petens debet designare tenenti rem petitam, ut sciri possit, si istam tenuerit vel non.

In visu autē faciēdo, tenenti debet petens designare rem petitā omnibus m̄odis quibus poterit, coram illis qui ad hoc cōvocantur, tam in corpore ipsius rei quâm in ejus p̄tinentiis, cùm difficile sit de incerta re certum p̄ferre juditium. Et talis erit designatio, s. ut si dicatur: Peto tale maneriū p̄ metas & divisas istas & tales p̄tinentias, ut per hoc p̄pendi possit utrum tenens totum maneriū cum p̄tinentiis teneat, vel ejus partē, vel nihil. Et sufficit si maneriū petierit cum p̄tinēt̄iis

record, and if by chance an essoin has been interposed, let mention always be made in the essoin that the view has been attested, and if by chance it has not been attested, and the tenant has come upon his appointed day, and can show that they have not made a view, he shall have another day, unless the claimant himself can show the contrary, under the risk of a jeopardy.

2. If the trial has been transferred to the great court from the county court, and there shall be a dispute respecting a view having been had or the county.

But when a suit has been transferred from the county to the great court, and when he has had a view in the county, it should be objected to him in the great court that he has had a view in the county, let it be inquired of the claimant, if he wishes thereon to put himself upon the record of the county, which has a record thereof, or not, and in which case if the claimant wishes this, let a record thereof be made through the county, and let the record come before the justiciaries; but it rarely happens that the claimant chooses that way to put off his suit, since it is more advantageous to allow him for a second time a view, than to proceed to an inquisition through the county concerning a view which has been had.

## Chapter XII.

1. In what way the claimant should designate to the tenant the thing claimed, that it may be known, if he has it or not.

But in making a view, the claimant ought to designate to the tenant the thing claimed in every way in which he can, before those who are convoked for this purpose, as well in the body of the thing itself as in its appurtenances, since it is difficult to pronounce a certain judgment upon an uncertain thing. And of this kind shall be the designation, as if it be said: I claim such a manor by such metes and bounds and such appurtenances, so that it may thereby be ascertained, whether the tenant holds the entire manor with the appurtenances, or a part, or none. And it suffices, if he

p certas divisas, nec oportet glebas manerii circumire, & ppter hoc nō cadit breve, si forte sit aliquis qui terram tenuerit infra corpus manerii, de qua tenens nihil habuerit, nec in servitio nec in dominico, dum tamen fiat ptestatio à petente, q nihil inde clamat in dñico nec in servitio.

2. Si contentio habeatur quantum terræ positum fuerit in visu, aliquando fit inde jocus partitus. cf. p. 380.

Cùm vero de visu facto aliquando inter ptes fiat cōtentio, ut si dicat tenens q petens plus posuit in visu suo vel minus qm in brevi cōtineatur: ut de termñ S. M. añ regni regis H. decimoquarto incipiente decimoquinto circa principiū, sub pœna amissionis fiat inquisitio de veritate, & secundū quod inveniri poterit de termino Sanctæ Trinitatis anno regni regis H. secūdo post guerrā in coñ Wilt. de Galfrido de Chessewicke: cùm ptes se inde posuerunt in inquisitionē patriæ, & gratis se posuerint in certas psonas, quatuor vel sex, cum quibusdam qui visui interfuerint, tunc veniat inquisitio ad certificādū de veritate p tale breve.

3. Si fiat inquisitio, tunc sic.

Rex vic. salutē. Præcipimus tibi quòd venire facias coram justic. nostris tali die &c. A. servientē talis, & attornatum suum in loquela q̃ est inter eundem A. talē & talē, de tanto terræ cum ptinentiis &c. Et similiter cum eo A. B. C. D., super quos p̃dicti tales se posuerunt, & p̃terea quatuor ex illis qui visui interfuerint, q̃m p̃dictus A. attornatus talis petentis fecit tali tenenti, s. de prato vel terra cum ptinentiis in tali villa, quod

has claimed a manor with its appurtenances by certain boundaries, nor is it necessary to make a circuit of the glebe of the manor, and on that account the writ does not fall, if by chance there be any one who has held land within the body of the manor, of which the tenant holds nothing, neither in service nor in domain, provided however there be a public declaration on the part of the plaintiff that he claims nothing thereof in domain or in service.

2. If there be a dispute how much land has been included in the view, there is sometimes made of it an alternative risk. p. 380.

But since there is sometimes a dispute between the parties concerning the view made, as if the tenant should say that the claimant has put into the view more or less than is contained in the writ, as in the term of St. Michael in the fourteenth and fifteenth years of the reign of king Henry, about the beginning [of the roll], under penalty of losing it let an inquisition be made concerning the truth, and according to what may be found in the term of Holy Trinity in the second year of the reign of king Henry after the war, in the county of Wilts, concerning Galfrid de Chessewicke: when the parties had put themselves thereon on an inquisition of the county, and had gratuitously put themselves on certain persons, four or six, with certain persons who had taken part in the view, then let an inquisition come to certify concerning the truth through a writ of this kind.

3. If an inquisition be thereon made, then thus.

The king to the viscount greeting. We enjoin you that you cause to come before our justiciaries on such a day &c. A. the servant of so-and-so, and his attorney in the trial which is between the said A. and so-and-so concerning so much land with its appurtenances &c. And in like manner with him A. B. C. D., upon whom the parties aforesaid have put themselves, and besides four of those who have taken part in the view, which the aforesaid A. the attorney of so-and-so the claimant has made for the said tenant, to wit, concerning the meadow or land with its appurtenances in such a vill, which

pratum, vel quam terram, idem talis clamat ut jus suum versus eundem talē, ad certificandum p̃fatos justic. nostros quid & quantum prati vel terræ idem A., attornatus s. ipsius talis, petentis s., posuit in viso suo. Et unde idem talis, tenens s., dicit q̃ idem A. non posuit in visu suo nisi tantū prati vel tantū terræ, & in diversis locis, & tot particulas, & ita ꝑ inde interim certificēt, quòd p̃fatos justic. nostros ad eundem diem pleniùs inde certificare possunt. Et habeas ibi hoc breve. Teste &c.

Habito visu tunc warrantum vocet tenens, si voluerit, si warrantum habeat.

Habito sic visu, statim perpendere potest tenens utrum terram petitam teneat, vel ejus p̃tem, vel nihil: ut si totā teneat, sic statim ad diem suū respondeat, vel si warrantum habeat, illū vocet qui ipsum in seysina sua defendat. Si autem nihil inde teneat, nec in dominico nec in servitio, vel nisi ejus partē, q̃ de brevi illo recedat quietus. Sed quoniam quandoquè melius erit & tutius tenenti warrantū vocare, quâm in p̃sonam suam defensionis periculum suscipere, cùm plures forte & aliæ competant exceptiones warranto quâm tenēti, ideo prius tractandū erit de warranto & ejus vocatione.

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meadow or which land the said so-and-so claims as his right against the said so-and-so, to certify our justiciaries aforesaid what and how much meadow or land the said A. the attorney, to wit, of the said so-and-so the claimant, to wit, has put in his view. And whereof the said so-and-so the tenant, to wit, says that the said A. has only put in his view so much meadow or so much land, and in different places, and so many small parts, and let them in the meanwhile so certify themselves thereof, that they may be able to certify our aforesaid justiciaries more fully thereof on the same day. And do thou have there this writ. Witness &c.

4. Upon a view having been made, let the tenant then call a warrantor, if he wishes, if he has a warrantor.

A view having thus been had, the tenant may forthwith determine whether he will keep the whole of the land claimed, or a part of it, or nothing; that, if he keeps the whole, he may forthwith answer at once on his appointed day, or if he have a warrantor, he may call him, who may maintain him in his seysine. But if he holds nothing thereof, neither in domain nor in service, or only a part of it, that he may withdraw acquitted from that writ. But since sometimes it will be better and safer for the tenant to call a warrantor, than to take upon his own person the danger of a defence, since more exceptions by chance and other are available to a warrantor than to a tenant, for that reason let us first treat of a warrantor and the calling of him.

HERE ENDS THE THIRD TREATISE OF THE FIFTH BOOK.

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